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STATUTORY INSTRUMENTS

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**2019 No. 537**

**EXITING THE EUROPEAN  
UNION, NORTHERN IRELAND  
TERMS AND CONDITIONS OF  
EMPLOYMENT, NORTHERN IRELAND**

The Employment Rights (Amendment)  
(Northern Ireland) (EU Exit) Regulations 2019

*Made - - - - 4th March 2019*

*Coming into force in accordance with regulation 1*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to measures relating to employment rights and duties<sup>(2)</sup> and measures relating to the organisation of working time<sup>(3)</sup>.

In accordance with paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018<sup>(4)</sup>, and paragraph 2(2) of Schedule 2, to the European Communities Act 1972 a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018, and section 2(2) of, and paragraph 1A of Schedule 2, to the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments to be construed as references to those provisions as amended from time to time.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Employment Rights (Amendment) (Northern Ireland) (EU Exit) Regulations 2019, and come into force on exit day, subject to paragraph (2).

(2) The following provisions of these Regulations come into force the day after the day on which these Regulations are made—

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(1) 1972 c. 68; section 2(2) has been amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1) and by the European Union (Amendment) Act 2008 (c. 7), section 3 and the Schedule.  
(2) S.I. 2000/738.  
(3) S.I. 1997/1174.  
(4) 2018 c. 16.

- (a) this regulation;
- (b) in the Schedule—
  - (i) paragraph 5(2)(c), and
  - (ii) paragraph 8(2)(c);and regulation 2, as it relates to those provisions.
- (3) These Regulations extend to Northern Ireland only.

**Amendments to employment rights legislation extending to Northern Ireland**

2. The Schedule (which amends employment rights legislation extending to Northern Ireland, and contains a saving provision) has effect.

*Kelly Tolhurst*  
Minister for Small Business, Consumers and  
Corporate Responsibility  
Department for Business, Energy and Industrial  
Strategy

4th March 2019

SCHEDULE

Regulation 2

AMENDMENTS TO EMPLOYMENT RIGHTS  
LEGISLATION EXTENDING TO NORTHERN IRELAND

PART 1

PRIMARY LEGISLATION

**The Employment Rights (Northern Ireland) Order 1996**

1. In Article 111(5) (entitlement to parental leave – supplemental) of the Employment Rights (Northern Ireland) Order 1996(6), omit paragraph (3).

**The Employment Relations (Northern Ireland) Order 1999**

2. In Article 21 (part-time work: discrimination) of the Employment Relations (Northern Ireland) Order 1999(7), omit paragraph (4).

**Employment Act 2002**

3. In section 46 (fixed-term work: Northern Ireland) of the Employment Act 2002(8), omit subsection (4).

**Employment Relations Act 2004**

4.—(1) Section 43 (information and consultation: Northern Ireland) of the Employment Relations Act 2004(9) is amended as follows.

(2) Omit subsection (5).

(3) In subsection (6), for “(2) to (5)” substitute “(2) to (4)”.

PART 2

SECONDARY LEGISLATION

**Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002**

5.—(1) The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002(10) are amended as follows.

(2) In regulation 3 (treatment of persons in other EEA States as employees)—

(a) in the heading omit “other”;

(b) in sub-paragraph (a) omit the words “other than the United Kingdom”;

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(5) Article 111 was substituted by Article 9 of, and Part 1 of Schedule 4 to, the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)).

(6) S.I. 1996/1919 (N.I. 16).

(7) S.I. 1999/2790 (N.I. 9).

(8) 2002 c. 22.

(9) 2004 c. 24.

(10) S.R.(N.I.) 2002 No. 382; relevant amendments are S.R.(N.I.) 2010 No. 306 and S.R.(N.I.) 2015 No. 146.

*Status: This is the original version (as it was originally made).*

- (c) in sub-paragraph (b) after “1408/71” insert “as amended from time to time or Regulation (EC) No 883/2004(11) of the European Parliament and of the Council of 29 April 2004 as amended from time to time on the coordination of social security systems”.
- (3) In regulation 5 (entitlement to statutory paternity pay where person has worked in an EEA State)—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (b) for “another” substitute “an”;
    - (ii) after sub-paragraph (b) for “the other EEA” substitute “the EEA”;
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (b) for “another” substitute “an”;
    - (ii) after sub-paragraph (b) for “the other EEA” substitute “the EEA”.
- (4) In regulation 6 (entitlement to statutory adoption pay where person has worked in an EEA State)—
  - (a) in sub-paragraph (b) for “another” substitute “an”;
  - (b) after sub-paragraph (b) for “the other EEA” substitute “the EEA”.

#### **The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005**

6. In Schedule 1 (Industrial Tribunal Rules of Procedure) to the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005(12) omit paragraph 57 (references to the European Court of Justice).

#### **The Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005**

7. In Schedule 1 (Fair Employment Tribunal Rules of Procedure) to the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005(13) omit paragraph 44 (references to the European Court of Justice).

#### **The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2015**

8.—(1) The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2015(14) are amended as follows.

- (2) In regulation 5 (treatment of persons in other EEA States as employees)—
  - (a) in the heading omit “other”;
  - (b) in sub-paragraph (a) omit “other than the United Kingdom”;
  - (c) in sub-paragraph (b) after “1408/71” insert “as amended from time to time or Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 as amended from time to time on the coordination of social security systems”.
- (3) In regulation 7 (entitlement to statutory shared parental pay where person has worked in an EEA State)—
  - (a) in paragraph (1)—

(11) Regulation (EC) 883/2004, of 29 April 2004, of the European Parliament and of the Council on the coordination of social security systems O.J. No. L166, 30.4.04, p.1-123.

(12) S.R.(N.I.) 2005 No. 150; to which there are amendments not relevant to these Regulations.

(13) S.R.(N.I.) 2005 No. 151; to which there are amendments not relevant to these Regulations.

(14) S.R.(N.I.) 2015 No. 103.

- (i) in sub-paragraph (c) for “another” substitute “an”;
- (ii) after sub-paragraph (c) for “the other EEA” substitute “the EEA”;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (c) for “another” substitute “an”;
  - (ii) after sub-paragraph (c) for “the other EEA” substitute “the EEA”.
- (4) In Schedule 2 (adoptions from overseas) in paragraph 6(1), in the modified version of regulation 7(2)—
  - (a) in sub-paragraph (c) for “another” substitute “an”;
  - (b) after sub-paragraph (c) for “the other EEA” substitute “the EEA”.

### **The Working Time Regulations (Northern Ireland) 2016**

- 9.—(1) The Working Time Regulations (Northern Ireland) 2016<sup>(15)</sup> are amended as follows.
- (2) Regulation 22 (excluded sectors) is amended as follows—
- (a) in paragraph (2) for sub-paragraph (b) substitute—
    - “(b) to workers to whom the Civil Aviation (Working Time) Regulations 2004<sup>(16)</sup> apply.”;
  - (b) in paragraph (3) for the words from “[Directive 2002/15/EC](#)” to the end substitute “the Road Transport (Working Time) Regulations (Northern Ireland) 2005<sup>(17)</sup> apply”.

### **The Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016**

- 10.—(1) The Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016<sup>(18)</sup> are amended as follows.
- (2) In regulation 3 (scope of application of Part 2)—
- (a) in paragraph (2)—
    - (i) for the definition of “employer” substitute—
      - ““employer” means a service provider established in the United Kingdom or a Member State which posts or hires out workers in a manner described by paragraph 3 of Article 1 of [Directive 96/71/EC](#)<sup>(19)</sup>”;
    - (ii) in the definition of “posted worker in the construction sector”, in sub-paragraph (a), omit “other than the United Kingdom”.
  - (b) after paragraph (2) insert—
    - “(3) For the purposes of the definition of “employer” in paragraph (2), paragraph 3 of Article 1 of [Directive 96/71/EC](#) is to be read as if—
      - (a) in point (a)—
        - (i) after “post workers to” there were inserted “the United Kingdom or”;
        - (ii) after “operating in” there were inserted “the United Kingdom or”;
      - (b) in point (b), after “by the group in” there were inserted “the United Kingdom or”;

<sup>(15)</sup> S.R.(N.I.) 2016 No. 49.

<sup>(16)</sup> S.I. 2004/756.

<sup>(17)</sup> S.R.(N.I.) 2005 No. 241; amended by S.R.(N.I.) 2007 No. 323 and S.R.(N.I.) 2012 No. 169.

<sup>(18)</sup> S.R.(N.I.) 2016 No. 242.

<sup>(19)</sup> O.J. No. L18, 21.1.1997, p.1.

*Status: This is the original version (as it was originally made).*

(c) in point (c), after “operating in” there were inserted “the United Kingdom or”.”

(3) In regulation 8 (cross-border enforcement of financial administrative penalties and fines) omit “other than the United Kingdom” in each place it occurs.

## PART 3

### SAVING PROVISION

**11.** The amendments made by Part 1 of this Schedule do not affect the validity of any regulations that came into force before exit day and were made under any of the Acts or Orders amended by that Part.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 8(1) of, and Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained European Union (EU) law to operate effectively and other deficiencies (in particular under paragraphs (a), (d), (e) and (g) of section 8(2) of that Act) arising from the withdrawal of the United Kingdom (UK) from the EU. The powers in section 2(2) of the European Communities Act 1972 are relied upon to make amendments to correct existing technical inaccuracies in the current legislation (these amendments are made by paragraphs 5(2)(c) and 8(2)(c) of the Schedule).

These Regulations make amendments to legislation in the field of employment rights.

The Schedule contains amendments to primary and secondary legislation extending to Northern Ireland. The amendments to primary legislation include the repeal of existing powers to make regulations to implement or deal with matters arising out of or related to the UK’s obligations under certain EU Directives (which concern provision for parental leave, part time workers, fixed term work and information and consultation). Amendments are also made to secondary legislation to amend or remove references that relate to the UK’s membership of the EU. The saving provision in Part 3 of the Schedule, ensures that these amendments do not affect the validity of any regulations, that came into force before exit day and were made under those Acts or Orders amended by Part 1.

A full impact assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sector is foreseen.