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STATUTORY INSTRUMENTS

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**1998 No. 1833**

**The Working Time Regulations 1998**

**PART II**

**RIGHTS AND OBLIGATIONS CONCERNING WORKING TIME**

**General**

3. The provisions of this Part have effect subject to the exceptions provided for in Part III of these Regulations.

**Maximum weekly working time**

4.—(1) Subject to regulation 5, a worker's working time, including overtime, in any reference period which is applicable in his case shall not exceed an average of 48 hours for each seven days.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each worker employed by him in relation to whom it applies.

(3) Subject to paragraphs (4) and (5) and any agreement under regulation 23(b), the reference periods which apply in the case of a worker are—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or
- (b) in any other case, any period of 17 weeks in the course of his employment.

(4) Where a worker has worked for his employer for less than 17 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.

(5) Paragraphs (3) and (4) shall apply to a worker who is excluded from the scope of certain provisions of these Regulations by regulation 21 as if for each reference to 17 weeks there were substituted a reference to 26 weeks.

(6) For the purposes of this regulation, a worker's average working time for each seven days during a reference period shall be determined according to the formula—

$$\frac{A + B}{C}$$

where—

**A** is the aggregate number of hours comprised in the worker's working time during the course of the reference period;

**B** is the aggregate number of hours comprised in his working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period on which he has worked equals the number of excluded days during the reference period; and

**C** is the number of weeks in the reference period.

- (7) In paragraph (6), “excluded days” means days comprised in—
- (a) any period of annual leave taken by the worker in exercise of his entitlement under regulation 13;
  - (b) any period of sick leave taken by the worker;
  - (c) any period of maternity leave taken by the worker; and
  - (d) any period in respect of which the limit specified in paragraph (1) did not apply in relation to the worker by virtue of regulation 5.

### **Agreement to exclude the maximum**

5.—(1) The limit specified in regulation 4(1) shall not apply in relation to a worker who has agreed with his employer in writing that it should not apply in his case, provided that the employer complies with the requirements of paragraph (4).

- (2) An agreement for the purposes of paragraph (1)—
- (a) may either relate to a specified period or apply indefinitely; and
  - (b) subject to any provision in the agreement for a different period of notice, shall be terminable by the worker by giving not less than seven days' notice to his employer in writing.
- (3) Where an agreement for the purposes of paragraph (1) makes provision for the termination of the agreement after a period of notice, the notice period provided for shall not exceed three months.
- (4) The requirements referred to in paragraph (1) are that the employer—
- (a) maintains up-to-date records which—
    - (i) identify each of the workers whom he employs who has agreed that the limit specified in regulation 4(1) should not apply in his case;
    - (ii) set out any terms on which the worker agreed that the limit should not apply; and
    - (iii) specify the number of hours worked by him for the employer during each reference period since the agreement came into effect (excluding any period which ended more than two years before the most recent entry in the records);
  - (b) permits any inspector appointed by the Health and Safety Executive or any other authority which is responsible under regulation 28 for the enforcement of these Regulations to inspect those records on request; and
  - (c) provides any such inspector with such information as he may request regarding any case in which a worker has agreed that the limit specified in regulation 4(1) should not apply in his case.

### **Length of night work**

6.—(1) A night worker's normal hours of work in any reference period which is applicable in his case shall not exceed an average of eight hours for each 24 hours.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each night worker employed by him.

- (3) The reference periods which apply in the case of a night worker are—
- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or
  - (b) in any other case, any period of 17 weeks in the course of his employment.

(4) Where a worker has worked for his employer for less than 17 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.

(5) For the purposes of this regulation, a night worker's average normal hours of work for each 24 hours during a reference period shall be determined according to the formula—

$$\frac{A}{B - C}$$

where—

**A** is the number of hours during the reference period which are normal working hours for that worker;

**B** is the number of days during the reference period, and

**C** is the total number of hours during the reference period comprised in rest periods spent by the worker in pursuance of his entitlement under regulation 11, divided by 24.

(6) A night worker's normal hours of work for the purposes of this regulation are his normal working hours for the purposes of the 1996 Act in a case where section 234 of that Act (which provides for the interpretation of normal working hours in the case of certain employees) applies to him.

(7) An employer shall ensure that no night worker employed by him whose work involves special hazards or heavy physical or mental strain works for more than eight hours in any 24-hour period during which the night worker performs night work.

(8) For the purposes of paragraph (7), the work of a night worker shall be regarded as involving special hazards or heavy physical or mental strain if—

(a) it is identified as such in—

(i) a collective agreement, or

(ii) a workforce agreement,

which takes account of the specific effects and hazards of night work, or

(b) it is recognised in a risk assessment made by the employer under regulation 3 of the Management of Health and Safety at Work Regulations 1992(1) as involving a significant risk to the health or safety of workers employed by him.

### **Health assessment and transfer of night workers to day work**

7.—(1) An employer—

(a) shall not assign an adult worker to work which is to be undertaken during periods such that the worker will become a night worker unless—

(i) the employer has ensured that the worker will have the opportunity of a free health assessment before he takes up the assignment; or

(ii) the worker had a health assessment before being assigned to work to be undertaken during such periods on an earlier occasion, and the employer has no reason to believe that that assessment is no longer valid, and

(b) shall ensure that each night worker employed by him has the opportunity of a free health assessment at regular intervals of whatever duration may be appropriate in his case.

(2) Subject to paragraph (4), an employer—

(a) shall not assign a young worker to work during the period between 10 p.m. and 6 a.m. ("the restricted period") unless—

(1) S.I.1992/2051, amended by S.I. 1994/2865 and 1997/135.

- (i) the employer has ensured that the young worker will have the opportunity of a free assessment of his health and capacities before he takes up the assignment; or
- (ii) the young worker had an assessment of his health and capacities before being assigned to work during the restricted period on an earlier occasion, and the employer has no reason to believe that that assessment is no longer valid; and
- (b) shall ensure that each young worker employed by him and assigned to work during the restricted period has the opportunity of a free assessment of his health and capacities at regular intervals of whatever duration may be appropriate in his case.
- (3) For the purposes of paragraphs (1) and (2), an assessment is free if it is at no cost to the worker to whom it relates.
- (4) The requirements in paragraph (2) do not apply in a case where the work a young worker is assigned to do is of an exceptional nature.
- (5) No person shall disclose an assessment made for the purposes of this regulation to any person other than the worker to whom it relates, unless—
  - (a) the worker has given his consent in writing to the disclosure, or
  - (b) the disclosure is confined to a statement that the assessment shows the worker to be fit—
    - (i) in a case where paragraph (1)(a)(i) or (2)(a)(i) applies, to take up an assignment, or
    - (ii) in a case where paragraph (1)(b) or (2)(b) applies, to continue to undertake an assignment.
- (6) Where—
  - (a) a registered medical practitioner has advised an employer that a worker employed by the employer is suffering from health problems which the practitioner considers to be connected with the fact that the worker performs night work, and
  - (b) it is possible for the employer to transfer the worker to work—
    - (i) to which the worker is suited, and
    - (ii) which is to be undertaken during periods such that the worker will cease to be a night worker,

the employer shall transfer the worker accordingly.

### **Pattern of work**

8. Where the pattern according to which an employer organizes work is such as to put the health and safety of a worker employed by him at risk, in particular because the work is monotonous or the work-rate is predetermined, the employer shall ensure that the worker is given adequate rest breaks.

### **Records**

9. An employer shall—
- (a) keep records which are adequate to show whether the limits specified in regulations 4(1) and 6(1) and (7) and the requirements in regulations 7(1) and (2) are being complied with in the case of each worker employed by him in relation to whom they apply; and
  - (b) retain such records for two years from the date on which they were made.

### **Daily rest**

10.—(1) An adult worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which he works for his employer.

(2) Subject to paragraph (3), a young worker is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period during which he works for his employer.

(3) The minimum rest period provided for in paragraph (2) may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.

### **Weekly rest period**

**11.**—(1) Subject to paragraph (2), an adult worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven-day period during which he works for his employer.

(2) If his employer so determines, an adult worker shall be entitled to either—

(a) two uninterrupted rest periods each of not less than 24 hours in each 14-day period during which he works for his employer; or

(b) one uninterrupted rest period of not less than 48 hours in each such 14-day period,

in place of the entitlement provided for in paragraph (1).

(3) Subject to paragraph (8), a young worker is entitled to a rest period of not less than 48 hours in each seven-day period during which he works for his employer.

(4) For the purpose of paragraphs (1) to (3), a seven-day period or (as the case may be) 14-day period shall be taken to begin—

(a) at such times on such days as may be provided for for the purposes of this regulation in a relevant agreement; or

(b) where there are no provisions of a relevant agreement which apply, at the start of each week or (as the case may be) every other week.

(5) In a case where, in accordance with paragraph (4), 14-day periods are to be taken to begin at the start of every other week, the first such period applicable in the case of a particular worker shall be taken to begin—

(a) if the worker's employment began on or before the date on which these Regulations come into force, on 5th October 1998; or

(b) if the worker's employment begins after the date on which these Regulations come into force, at the start of the week in which that employment begins.

(6) For the purposes of paragraphs (4) and (5), a week starts at midnight between Sunday and Monday.

(7) The minimum rest period to which an adult worker is entitled under paragraph (1) or (2) shall not include any part of a rest period to which the worker is entitled under regulation 10(1), except where this is justified by objective or technical reasons or reasons concerning the organization of work.

(8) The minimum rest period to which a young worker is entitled under paragraph (3)—

(a) may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration; and

(b) may be reduced where this is justified by technical or organization reasons, but not to less than 36 consecutive hours.

### **Rest breaks**

**12.**—(1) Where an adult worker's daily working time is more than six hours, he is entitled to a rest break.

(2) The details of the rest break to which an adult worker is entitled under paragraph (1), including its duration and the terms on which it is granted, shall be in accordance with any provisions for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.

(3) Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes, and the worker is entitled to spend it away from his workstation if he has one.

(4) Where a young worker's daily working time is more than four and a half hours, he is entitled to a rest break of at least 30 minutes, which shall be consecutive if possible, and he is entitled to spend it away from his workstation if he has one.

(5) If, on any day, a young worker is employed by more than one employer, his daily working time shall be determined for the purpose of paragraph (4) by aggregating the number of hours worked by him for each employer.

### **Entitlement to annual leave**

**13.**—(1) Subject to paragraphs (5) and (7), a worker is entitled in each leave year to a period of leave determined in accordance with paragraph (2).

(2) The period of leave to which a worker is entitled under paragraph (1) is—

- (a) in any leave year beginning on or before 23rd November 1998, three weeks;
- (b) in any leave year beginning after 23rd November 1998 but before 23rd November 1999, three weeks and a proportion of a fourth week equivalent to the proportion of the year beginning on 23rd November 1998 which has elapsed at the start of that leave year; and
- (c) in any leave year beginning after 23rd November 1999, four weeks.

(3) A worker's leave year, for the purposes of this regulation, begins—

- (a) on such date during the calendar year as may be provided for in a relevant agreement; or
- (b) where there are no provisions of a relevant agreement which apply—
  - (i) if the worker's employment began on or before 1st October 1998, on that date and each subsequent anniversary of that date; or
  - (ii) if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.

(4) Paragraph (3) does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

(5) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (2) equal to the proportion of that leave year remaining on the date on which his employment begins.

(6) Where by virtue of paragraph (2)(b) or (5) the period of leave to which a worker is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(7) The entitlement conferred by paragraph (1) does not arise until a worker has been continuously employed for thirteen weeks.

(8) For the purposes of paragraph (7), a worker has been continuously employed for thirteen weeks if his relations with his employer have been governed by a contract during the whole or part of each of those weeks.

(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

- (a) it may only be taken in the leave year in respect of which it is due, and

- (b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

### **Compensation related to entitlement to leave**

**14.—**(1) This regulation applies where—

- (a) a worker's employment is terminated during the course of his leave year, and
- (b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

- (a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or
- (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

$$(A \times B) - C$$

where—

**A** is the period of leave to which the worker is entitled under regulation 13(1);

**B** is the proportion of the worker's leave year which expired before the termination date, and

**C** is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise.

### **Dates on which leave is taken**

**15.—**(1) A worker may take leave to which he is entitled under regulation 13(1) on such days as he may elect by giving notice to his employer in accordance with paragraph (3), subject to any requirement imposed on him by his employer under paragraph (2).

(2) A worker's employer may require the worker—

- (a) to take leave to which the worker is entitled under regulation 13(1); or
- (b) not to take such leave,

on particular days, by giving notice to the worker in accordance with paragraph (3).

(3) A notice under paragraph (1) or (2)—

- (a) may relate to all or part of the leave to which a worker is entitled in a leave year;
- (b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and
- (c) shall be given to the employer or, as the case may be, the worker before the relevant date.

(4) The relevant date, for the purposes of paragraph (3), is the date—

- (a) in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates, and
  - (b) in the case of a notice under paragraph (2)(b), as many days in advance of the earliest day so specified as the number of days or part-days to which the notice relates.
- (5) Any right or obligation under paragraphs (1) to (4) may be varied or excluded by a relevant agreement.
- (6) This regulation does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

### **Payment in respect of periods of leave**

- 16.**—(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13, at the rate of a week's pay in respect of each week of leave.
- (2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3).
- (3) The provisions referred to in paragraph (2) shall apply—
- (a) as if references to the employee were references to the worker;
  - (b) as if references to the employee's contract of employment were references to the worker's contract;
  - (c) as if the calculation date were the first day of the period of leave in question; and
  - (d) as if the references to sections 227 and 228 did not apply.
- (4) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under his contract ("contractual remuneration").
- (5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **Entitlements under other provisions**

- 17.** Where during any period a worker is entitled to a rest period, rest break or annual leave both under a provision of these Regulations and under a separate provision (including a provision of his contract), he may not exercise the two rights separately, but may, in taking a rest period, break or leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.