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STATUTORY INSTRUMENTS

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**2000 No. 1551**

**The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000**

**PART II**

**RIGHTS AND REMEDIES**

**Complaints to employment tribunals etc.**

**8.—**(1) Subject to regulation 7(5), a worker may present a complaint to an employment tribunal that his employer has infringed a right conferred on him by regulation 5 or 7(2).

(2) Subject to paragraph (3), an employment tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months (or, in a case to which regulation 13 applies, six months) beginning with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them.

(3) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of calculating the date of the less favourable treatment or detriment under paragraph (2)—

- (a) where a term in a contract is less favourable, that treatment shall be treated, subject to paragraph (b), as taking place on each day of the period during which the term is less favourable;
- (b) where an application relies on regulation 3 or 4 the less favourable treatment shall be treated as occurring on, and only on, in the case of regulation 3, the first day on which the applicant worked under the new or varied contract and, in the case of regulation 4, the day on which the applicant returned; and
- (c) a deliberate failure to act contrary to regulation 5 or 7(2) shall be treated as done when it was decided on.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of paragraph (4)(c) to decide not to act—

- (a) when he does an act inconsistent with doing the failed act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to have done the failed act if it was to be done.

(6) Where a worker presents a complaint under this regulation it is for the employer to identify the ground for the less favourable treatment or detriment.

(7) Where an employment tribunal finds that a complaint presented to it under this regulation is well founded, it shall take such of the following steps as it considers just and equitable—

- (a) making a declaration as to the rights of the complainant and the employer in relation to the matters to which the complaint relates;

- (b) ordering the employer to pay compensation to the complainant;
- (c) recommending that the employer take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.

(8) Where a tribunal finds a complaint to be well founded on the ground that the complainant has been treated less favourably in respect of either the terms on which he is afforded access to membership of an occupational pension scheme or his treatment under the rules of such a scheme, the steps taken by a tribunal under paragraph (7) as regards that less favourable treatment shall not relate to a period earlier than two years before the date on which the complaint was presented.

(9) Where a tribunal orders compensation under paragraph (7)(b), the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances (subject to paragraph (8)) having regard to—

- (a) the infringement to which the complaint relates, and
- (b) any loss which is attributable to the infringement having regard, in the case of an infringement of the right conferred by regulation 5, to the pro rata principle except where it is inappropriate to do so.

(10) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the infringement, and
- (b) loss of any benefit which he might reasonably be expected to have had but for the infringement.

(11) Compensation in respect of treating a worker in a manner which infringes the right conferred on him by regulation 5 shall not include compensation for injury to feelings.

(12) In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

(13) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(14) If the employer fails, without reasonable justification, to comply with a recommendation made by an employment tribunal under paragraph (7)(c) the tribunal may, if it thinks it just and equitable to do so—

- (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under paragraph (7)(b); or
- (b) make an order under paragraph (7)(b).