

2002 No. 3128

TERMS AND CONDITIONS OF EMPLOYMENT

The Working Time (Amendment) Regulations 2002

Made - - - - - *16th December 2002*

Laid before Parliament *18th December 2002*

Coming into force - - *6th April 2003*

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the organisation of working time(b) and measures relating to the employment of children and young persons(c), in exercise of the powers conferred on her by that provision hereby makes the following Regulations—

1. These Regulations may be cited as the Working Time (Amendment) Regulations 2002 and shall come into force on 6th April 2003.

2. The Working Time Regulations 1998(d) shall be amended as provided in regulations 3–20 below.

3. In regulation 2 (interpretation), the following definition shall be inserted after the definition of “rest period”—

““the restricted period”, in relation to a worker, means the period between 10 p.m. and 6 a.m. or, where the worker’s contract provides for him to work after 10 p.m., the period between 11 p.m. and 7 a.m.”

4. In regulation 3 (general)—

(a) before “The”, there shall be inserted “(1)”, and

(b) the following paragraph shall be inserted after paragraph (1) (as created by paragraph (a) above)—

“(2) Where, in this Part, separate provision is made as respects the same matter in relation to workers generally and to young workers, the provision relating to workers generally applies only to adult workers and those young workers to whom, by virtue of any exception in Part 3, the provision relating to young workers does not apply.”

5. In paragraph (c) of regulation 4(7) (“excluded days” for the purpose of calculating average working time), after “maternity” there shall be inserted “paternity, adoption or parental”.

6. The following regulation shall be inserted after regulation 5—

“Maximum working time for young workers

5A.—(1) A young worker’s working time shall not exceed—

(a) eight hours a day, or

(b) 40 hours a week.

(a) 1972 c. 68.

(b) S.I. 1997/1174.

(c) S.I. 1996/266.

(d) S.I. 1998/1833, to which there are amendments not relevant to these Regulations.

(2) If, on any day, or, as the case may be, during any week, a young worker is employed by more than one employer, his working time shall be determined for the purpose of paragraph (1) by aggregating the number of hours worked by him for each employer.

(3) For the purposes of paragraphs (1) and (2), a week starts at midnight between Sunday and Monday.

(4) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limits specified in paragraph (1) are complied with in the case of each worker employed by him in relation to whom they apply.”

7. Regulation 6(6) (normal working hours for employees entitled to overtime pay) shall be omitted.

8. The following regulation shall be inserted after regulation 6—

“Night work by young workers

6A. An employer shall ensure that no young worker employed by him works during the restricted period.”

9. In regulation 7(2) (entitlement of young worker to health assessment before assignment to night work), for “the period between 10 p.m. and 6 a.m. (“the restricted period”)” there shall be substituted “the restricted period”.

10. In regulation 9 (records showing whether regulations are complied with)—

- (a) after “4(1)” in paragraph (a) there shall be inserted “,5A(1)”, and
- (b) before “7(1)” in that paragraph there shall be inserted “6A and”.

11. In regulation 10(1) (entitlement to daily rest period), for “An adult worker” there shall be substituted “A worker”.

12. In regulation 11(1), (2) and (7) (entitlement to weekly rest period), for “an adult worker” there shall be substituted “a worker”.

13. In regulation 12 (entitlement to rest breaks)—

- (a) for “an adult worker’s” in paragraph (1) there shall be substituted “a worker’s”, and
- (b) for “an adult worker” in paragraph (2) there shall be substituted “a worker”.

14. In regulation 19 (regulations not applying to domestic service)—

- (a) after “4(1) and (2)” there shall be inserted “,5A(1) and (4),” and
- (b) after “6(1), (2) and (7),” there shall be inserted “6A,”.

15. In regulation 25 (young workers in the armed forces)—

- (a) after “Regulations” in paragraph (2) there shall be inserted “5A, 6A,” and
- (b) for “a period which would otherwise be a rest period,” there shall be substituted “the restricted period, or is not permitted the minimum rest period provided for in regulation 10(2) or 11(3),”.

16. In regulation 26 (young workers employed on ships), after “Regulations” there shall be inserted “5A, 6A,”.

17. The following regulation shall be inserted after regulation 27—

“Other exceptions relating to young workers

27A.—(1) Regulation 5A does not apply in relation to a young worker where—

- (a) the young worker’s employer requires him to undertake work which is necessary either to maintain continuity of service or production or to respond to a surge in demand for a service or product;
- (b) no adult worker is available to perform the work, and
- (c) performing the work would not adversely affect the young worker’s education or training.

(2) Regulation 6A does not apply in relation to a young worker employed—

- (a) in a hospital or similar establishment, or
- (b) in connection with cultural, artistic, sporting or advertising activities, in the circumstances referred to in paragraph (1).

(3) Regulation 6A does not apply, except in so far as it prohibits work between midnight and 4 a.m., in relation to a young worker employed in—

- (a) agriculture;
- (b) retail trading;
- (c) postal or newspaper deliveries;
- (d) a catering business;
- (e) a hotel, public house, restaurant, bar or similar establishment, or
- (f) a bakery,

in the circumstances referred to in paragraph (1).

(4) Where the application of regulation 6A is excluded by paragraph (2) or (3), and a young worker is accordingly required to work during a period which would otherwise be a rest period or rest break—

- (a) he shall be supervised by an adult worker where such supervision is necessary for the young worker's protection, and
- (b) he shall be allowed an equivalent period of compensatory rest."

18. In regulation 27 (young workers: *force majeure*) both—

- (a) after "Regulations" in paragraph (1) and
- (b) after "regulation" in paragraph (2),

there shall be inserted "5A, 6A,".

19. In regulation 28 (enforcement)—

- (a) after "4(2)," in sub-paragraph (a) of paragraph (1) there shall be inserted "5A(4),";
- (b) after "6(2) and (7)," in that sub-paragraph there shall be inserted "6A," and
- (c) for "and 9" in that sub-paragraph there shall be substituted ",9 and 27A(4)(a)".

20. In regulation 30 (remedies), after "25(3)" in sub-paragraph (a)(iii) of paragraph (1) there shall be inserted ",27A(4)(b)".

Alan Johnson,
Minister of State for Employment
Relations, Industry and the Regions,
Department of Trade and Industry

16th December 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Working Time Regulations 1998, primarily in order to implement certain provisions of Council Directive 94/33/EC on the protection of young people at work (OJ No. L 216, 20.8.94, p. 12). The provisions in question restrict the working time of adolescents—those aged between 15 and 18 who are over compulsory school age, referred to as ‘young workers’—and the circumstances in which they may work during night-time.

Regulation 6 inserts a new regulation 5A into the 1998 Regulations, limiting the working time of young workers to 8 hours a day and 40 hours a week and requiring employers to ensure that these limits are complied with. Regulation 8 inserts a new regulation 6A, which requires employers to ensure that no young worker works during a restricted period. This is defined in an amendment provided for in regulation 3 as the period between 10 p.m. and 6 a.m., or, in a case where the worker is contracted to work after 10 p.m., the period between 11 p.m. and 7 a.m. Regulations 4 and 9 make consequential changes.

The new working time and night work restrictions are subject to various exceptions, relating to particular occupations and particular circumstances, provided for in amendments to the 1998 Regulations set out in regulations 10–18; there is an entitlement to compensatory rest where the night work restrictions are excluded. Regulation 19 makes the obligations on employers ‘relevant requirements’ for the purposes of the 1998 Regulations; the effect of this is that the obligations are enforceable by the Health and Safety Executive and that failure to comply is an offence. Regulation 20 makes an employer’s refusal to permit a young worker to exercise the entitlement to compensatory rest a matter that may be the subject of a complaint to an employment tribunal.

The Regulations also include two amendments to the 1998 Regulations that are unrelated to Council Directive 94/33/EC. Regulation 5 amends the definition of “excluded days”, a term used in the formula for calculating a worker’s average weekly working time, so as to include periods of paternity, adoption or parental leave. Regulation 7 revokes a provision excluding overtime from the calculation of a night worker’s normal hours of work in certain cases.

A Regulatory Impact Assessment of the costs and benefits of these Regulations to business, and a Transposition Note explaining how certain of the amendments provided for give effect to the Directive have been placed in the libraries of both Houses of Parliament. Copies are available to the public from the Employment Relations Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET, and the Assessment and Note are also accessible at the Directorate’s website: www.dti.gov.uk/er.

£1.75

© Crown copyright 2003

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.
E1860 1/2003 121860 19585

ISBN 0-11-044467-1



9 780110 444673