

Draft Order laid before Parliament under section 14(5) of the Work and Families Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

EMPLOYMENT

**The Work and Families (Increase
of Maximum Amount) Order 2009**

Made - - - - 2009
Coming into force - - 1st October 2009

In accordance with section 14(5) of the Work and Families Act 2006(1), 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 the following Order in exercise of the powers conferred by section 14 of the Work and Families Act 2006:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Work and Families (Increase of Maximum Amount) Order 2009 and shall come into force on 1st October 2009.

(2) In this Order—

- (a) “the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992(2);
and
- (b) “the 1996 Act” means the Employment Rights Act 1996(3).

Increase in the maximum amount of a week’s pay

2.—(1) For each of the sums specified(4) in section 186(1)(a) and (b) of the 1996 Act (employee’s rights on insolvency of employer: maximum amount payable) and section 227(1) of the 1996 Act(5) (maximum amount of a week’s pay for the purposes of certain provisions of the 1996 Act relating to awards of compensation and redundancy payments) substitute £380.

(1) 2006 c.18.
(2) 1992 c.52. Relevant amendments to this Act are noted in the footnotes below.
(3) 1996 c.18. Relevant amendments to this Act are noted in the footnotes below.
(4) The sums specified were substituted from 1st February 2009 by S.I. 2008/3055.
(5) Section 227(1) was amended by the Employment Act 2002 (c.22), section 53 and Schedule 7, paragraphs 24 and 47(1), (2) and (3).

(2) The substitution made by article 2(1) does not have effect in relation to a case where the appropriate date falls before 1 October 2009.

(3) In this article “the appropriate date” means—

- (a) in the case of an application made under section 67(1) of the 1992 Act (compensation for unjustifiable discipline by a trade union), the date of the determination infringing the applicant’s right;
- (b) in the case of a complaint presented under section 70C(1) of the 1992 Act⁽⁶⁾ (failure by an employer to consult with a trade union on training matters), the date of the failure;
- (c) in the case of an application made under section 176(2) of the 1992 Act⁽⁷⁾ (compensation for exclusion or expulsion from a trade union), the date of the exclusion or expulsion from the union;
- (d) in the case of an award under paragraph 159(1) of Schedule A1 to the 1992 Act⁽⁸⁾ where a worker has suffered a detriment that is the termination of the worker’s contract, the date of the termination;
- (e) in the case of an award of compensation under section 49(1)(b) of the 1996 Act by virtue of section 24(2) of the National Minimum Wage Act 1998⁽⁹⁾, where a worker has suffered a detriment that is the termination of the worker’s contract, the date of the termination;
- (f) in the case of an award under section 80I(1)(b) of the 1996 Act⁽¹⁰⁾ (award of compensation relating to an application for contract variation), the date of the failure in relation to the application or of the decision to reject the application;
- (g) in the case of an award under section 112(4) or (5) of the 1996 Act⁽¹¹⁾ (award in relation to unfair dismissal), the effective date of termination as defined by section 97 of that Act;
- (h) in the case of an award under section 117(3) of the 1996 Act⁽¹²⁾, where an employer has failed to reinstate or re-engage the complainant in accordance with an order under section 113 of that Act, the date by which the order for reinstatement (specified under section 114(2)(c) of that Act) or, as the case may be, re-engagement (specified under section 115(2)(f) of that Act), should have been complied with;
- (i) in the case of entitlement to a redundancy payment by virtue of section 135(1)(a) of the 1996 Act (dismissal by reason of redundancy), the relevant date as defined by section 145 of that Act⁽¹³⁾;
- (j) in the case of entitlement to a redundancy payment by virtue of section 135(1)(b) of the 1996 Act (lay-off or short-time), the relevant date as defined by section 153 of that Act;
- (k) in the case of entitlement to a payment under section 182 of the 1996 Act (payments by the Secretary of State), the appropriate date as defined by section 185 of that Act;
- (l) in the case of a complaint presented under section 11(1) of the Employment Relations Act 1999⁽¹⁴⁾ (failure or threatened failure to allow the worker to be accompanied at the disciplinary or grievance hearing, to allow the companion to address the hearing or confer with the worker, or to postpone the hearing), the date of the failure or threat;

⁽⁶⁾ Section 70C was inserted by the Employment Relations Act 1999 (c. 26), section 5.

⁽⁷⁾ Section 176 was substituted by section 14 of the Trade Union Reform and Employment Rights Act 1993 (c.19).

⁽⁸⁾ Schedule A1 was inserted by the Employment Relations Act 1999, section 1(1) and (3) and Schedule 1.

⁽⁹⁾ 1998 c.39.

⁽¹⁰⁾ Section 80I was inserted by the Employment Act 2002, section 47(1) and (2).

⁽¹¹⁾ Section 112(4) was amended by the Employment Act 2002, section 53, Schedule 7, paragraphs 24 and 36. Section 112(5) was inserted by the Employment Act 2002, section 34(1) and (3).

⁽¹²⁾ Section 117(3) was amended by the Employment Relations Act 1999, section 33(2).

⁽¹³⁾ Section 145(7) was repealed by the Employment Relations Act 1999, section 9 and 44; Schedule 4, Part III, paragraphs 5 and 26; and Schedule 9(2).

⁽¹⁴⁾ Section 11(1) was amended by the Employment Relations Act 2004, section 37(2).

- (m) in the case of an award made under section 38(2) of the Employment Act 2002⁽¹⁵⁾ (duty to give a written statement of initial employment particulars or of particulars of change), the date the proceedings to which that section applies were begun;
- (n) in the case of an increase in an award in pursuance of section 38(3) of the Employment Act 2002, the date the proceedings to which that section applies were begun;
- (o) in the case of a complaint presented under regulation 15 of the Flexible Working (Procedural Requirements) Regulations 2002⁽¹⁶⁾ (failure or threatened failure to allow an employee to be accompanied at a meeting or to postpone the meeting), the date of the failure or threat;
- (p) in the case of a complaint presented under paragraph 11(1) of Schedule 6 to the Employment Equality (Age) Regulations 2006⁽¹⁷⁾ (failure of employer to comply with duty to notify employee of date on which he intends employee to retire or of right to make request not to retire on the intended date), the date of the failure; and
- (q) in the case of a complaint presented under paragraph 12(1) of Schedule 6 to the Employment Equality (Age) Regulations 2006 (failure or threatened failure to allow an employee to be accompanied at a meeting, to allow the companion to address the meeting or confer with the employee, or to postpone the meeting), the date of the failure or threat.

Excluding the operation of indexation of the maximum amount

3. Any duty to make an order under section 34 of the Employment Relations Act 1999⁽¹⁸⁾ (indexation of certain amounts, etc) so far as relating to sums specified in the following provisions—

- (a) section 186(1)(a) and (b) of the 1996 Act; and
- (b) section 227(1) of the 1996 Act,

shall be excluded on the occasion of the retail prices index for September 2009 being found to be higher or lower than the index for September 2008.

Date

Name
Minister of State for Employment Relations and
Postal Affairs
Department for Business, Enterprise &
Regulatory Reform

⁽¹⁵⁾ 2002 c.22.

⁽¹⁶⁾ S.I. 2002/3207.

⁽¹⁷⁾ S.I. 2006/1031.

⁽¹⁸⁾ Section 34(1) was amended by the Employment Relations Act 2004 (c.24) and section 34(5) was amended by the Statistics and Registration Service Act 2007 (c.18). The most recent Order made under section 34 is S.I. 2008/3055.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order increases from £350 to £380 from 1st October 2009 the maximum weekly amount used for the purposes of calculating certain awards made by employment tribunals (including awards for unfair dismissal or redundancy) and certain payments made by the Secretary of State out of the National Insurance Fund where an employer is insolvent. By virtue of section 14(2) of the Work and Families Act 2006, amounts may be increased under that section on one occasion only. The increases apply where the event giving rise to the entitlement to compensation or other payments occurred on or after 1st October 2009.

Article 3 excludes, on this single occasion, the operation of section 34 of the Employment Relations Act 1999, in relation to the sums covered by this Order. Therefore the sums will not increase (or decrease) in line with the retail prices index for September 2009, in February 2010.

A full regulatory impact assessment in respect of this Order is available and a copy can be obtained from the Department for Business, Enterprise and Regulatory Reform, Employment Relations Directorate, 1 Victoria Street, London SW1H 0ET or on www.berr.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament.