

Draft Regulations laid before Parliament under section 41(2) of the Employment Tribunals Act 1996, section 42(2) of the Employment Relations Act 1999 and section 42(8) of the Employment Relations Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. XXX

EMPLOYMENT TRIBUNALS

TERMS AND CONDITIONS OF EMPLOYMENT

The Employment Rights (Miscellaneous
Amendments) Regulations 2019

<i>Made</i>	- - - -	*** 2019
<i>Coming into force</i>		
<i>Parts 1 and 2</i>		6th April 2019
<i>Remainder</i>		6th April 2020

The Secretary of State in exercise of the powers conferred by section 12A(12)(a) of the Employment Tribunals Act 1996⁽¹⁾, section 23(2), (4)(c) and (d) and (5A) of the Employment Relations Act 1999⁽²⁾ and section 42(1) and (3)(a) and (b) of the Employment Relations Act 2004⁽³⁾, makes the following Regulations.

In accordance with section 41(2) of the Employment Tribunals Act 1996⁽⁴⁾, section 42(2) of the Employment Relations Act 1999 and section 42(8) of the Employment Relations Act 2004, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

(1) 1996 c. 17.
(2) 1999 c. 26. Section 23 was amended by sections 41 and 53 of, and paragraph 54 of Schedule 7 to, the Employment Act 2002 (c. 22) and sections 39 and 57 of, and Schedule 2 to, the Employment Relations Act 2004 (c. 24).
(3) 2004 c. 24.
(4) As amended by section 150(5)(b) and (c) of the Small Business, Enterprise and Employment Act 2015 (c.26).

PART 1

CITATION AND COMMENCEMENT

Citation and commencement

1.—(1) These Regulations may be cited as the Employment Rights (Miscellaneous Amendments) Regulations 2019.

(2) Parts 1 and 2 of these Regulations come into force on 6th April 2019 and all other parts come into force on 6th April 2020.

PART 2

FINANCIAL PENALTIES

Amendment to section 12A of the Employment Tribunals Act 1996

2.—(1) Section 12A (financial penalties) of the Employment Tribunals Act 1996⁽⁵⁾ is amended as follows.

(2) In subsection (3)(b), for “£5,000” substitute “£20,000”.

(3) In subsection (5)(b)—

(a) for “£10,000” substitute “£40,000”;

(b) for “£5,000” substitute “£20,000”.

(4) In subsection (7)(b)(i), for “£5,000” substitute “£20,000”.

Application of regulation 2

3. The substitutions made by regulation 2 only apply in relation to a penalty payable in respect of a breach of a worker’s rights which begins on or after the date when regulation 2 comes into force.

PART 3

STATEMENTS OF EMPLOYMENT PARTICULARS

Amendment to the Employment Rights Act 1996

4. The Employment Rights Act 1996⁽⁶⁾ is amended as follows.

Amendment of section 1

5. In section 1 (statement of initial employment particulars)—

(a) in subsection (1)—

(i) for “an employee” substitute “a worker”;

(ii) for “the employee” substitute “the worker”;

(b) in subsection (3)(a), for “employee” substitute “worker”;

⁽⁵⁾ As amended by section 16(1) of the Enterprise and Regulatory Reform Act 2013 (c. 24).

⁽⁶⁾ 1996 c. 18.

- (c) at the beginning of subsection (3)(c), insert “in the case of a statement given to an employee,”;
- (d) in subsection (4)(d)(i), for “employee’s” substitute “worker’s”;
- (e) in subsection (4)(e), (f), (h) and (k) for “employee” substitute “worker”;
- (f) in subsection (4)(e), after “contract of employment” insert “or other worker’s contract”;
- (g) in subsection (5), for “an employee” substitute “a worker”;
- (h) in subsection (5)(a) and (b), for “employee’s” substitute “worker’s”;
- (i) in subsection (5)(b) for “employee” substitute “worker”.

Amendment of section 2

- 6. In section 2 (statement of initial particulars: supplementary)—
 - (a) in subsections (2), (3) and (5), for “employee”, in each place it occurs, substitute “worker”;
 - (b) in subsection (5) for “an employee’s” substitute “a worker’s”.

Amendment of section 3

- 7. In section 3(1)(a), (1)(aa), (1)(b)(i) and (ii) and (1)(c) (note about disciplinary procedures and pensions)(7), for “the employee”, in each place it occurs, substitute “the worker”.

Amendment of section 4

- 8. In section 4 (statement of changes)—
 - (a) in subsections (1), (3)(b), (4) in each place it occurs, (5) in each place it occurs and (6) for “the employee” substitute “the worker”;
 - (b) in subsection (6), for “an employee” substitute “a worker”;
 - (c) at the beginning of subsection (6)(b) insert “in the case of a statement given to an employee,”.

Amendment of section 5

- 9. In section 5(1) and (2) (exclusion from rights to statements)(8), for “an employee” substitute “a worker”.

Amendment of section 6

- 10. In section 6 (right to statements of employment particulars)—
 - (a) in the words before paragraph (a), for “an employee” substitute “a worker”;
 - (b) in paragraphs (a) and (b) for “the employee” substitute “the worker”.

Amendment of section 7A

- 11. In section 7A (right to statements of employment particulars)(9)—
 - (a) in subsection (1)(a)—
 - (i) for “an employee” substitute “a worker”;

(7) Section 3 was amended by the Employment Act 2002, sections 35 and 36, and the Pensions Act 2014 (c. 19), Schedule 13(2), paragraph 67.

(8) Section 5 was amended by the Employment Relations Act 1999, section 32(3).

(9) Section 7A was inserted by the Employment Act 2002, section 37.

- (ii) after “contract of employment” insert “or other worker’s contract”;
- (b) in subsections (2), (3), (4), (5) and (6) for “employee” substitute “worker”.

Amendment of section 7B

12. In section 7B (giving of alternative documents before start of employment)(**10**)—

- (a) after “contract of employment” insert “or other worker’s contract”;
- (b) for “an employee” substitute “a worker”;
- (c) for “employee’s” substitute “worker’s”.

Amendment of section 11

13. In section 11 (references to employment tribunals)(**11**)—

- (a) for subsection (1) substitute—

“(1) Where an employer does not give a worker a statement as required by section 1, 4 or 8 (either because the employer gives the worker no statement or because the statement the employer gives does not comply with what is required), the worker may require a reference to be made to an employment tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned.”;

- (b) for subsection (2)(a) substitute—

“(a) a statement purporting to be a statement under section 1 or 4, or a pay statement or a standing statement of fixed deductions purporting to comply with section 8 or 9, has been given to a worker, and”;

- (c) in the text after subsection (2)(b), for “the person to whom the statement has been given” substitute “the worker”.

Amendment of section 12

14. In section 12(1) and (2) (determination of references)(**12**), for “employee” substitute “worker”.

Application of regulations 4 to 14

15. The amendments made by regulations 4 to 14 only apply in relation to a written statement required by section 1 or 4 of The Employment Rights Act 1996 where the worker to whom the statement must be given begins employment with the employer on or after the date those regulations come into force.

(10) Section 7B was inserted by the Employment Act 2002 section 37.

(11) Section 11 was amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8); section 8 of, and paragraphs 15 and 16 of Schedule 2 to, the Enterprise and Regulatory Reform Act 2013; section 24 of, and paragraphs 66 and 68 of Schedule 13 to, the Pensions Act 2014; and S.I. 2011/1133, 2014/431 and 2018/529 (the last of which comes into force on 6th April 2019).

(12) Section 12 was amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 and S.I. 2018/529.

PART 4

INFORMATION AND CONSULTATION OF EMPLOYEES

Amendment of the Information and Consultation of Employees Regulations 2004

16.—(1) The Information and Consultation of Employees Regulations 2004⁽¹³⁾ are amended as follows.

(2) In regulation 5(3)(b) (entitlement to data) for “10%” substitute “2%”.

(3) In regulation 7(2) and (3) (employee request to negotiate an agreement in respect of information and consultation) for “10%”, in each place it occurs, substitute “2%”.

PART 5

CONSEQUENTIAL AMENDMENTS

Consequential Amendments

17.—(1) Section 38 of the Employment Act 2002⁽¹⁴⁾ (failure to give statement of employment particulars) is amended as follows.

(2) In subsection (1) for “an employee” substitute “a worker”.

(3) In subsection (2)—

(a) in paragraphs (a) and (b) for “employee” substitute “worker”;

(b) in paragraph (b) after “particulars of change) or” insert “(in the case of a claim by an employee)”;

(c) in the words after paragraph (b) for “employee” substitute “worker”.

(4) In subsection (3)—

(a) in paragraphs (a) and (b) for “employee” substitute “worker”;

(b) in paragraph (b) after “1996 or” insert “(in the case of a claim by an employee)”.

(5) In subsection (6) in the words before paragraph (a), for “an employee” substitute “a worker”.

(6) After subsection (6) insert—

“(6A) The provisions referred to in subsection (6) shall apply for the purposes of that subsection—

(a) as if a reference to an employee were a reference to a worker; and

(b) as if a reference to an employee’s contract of employment were a reference to a worker’s contract of employment or other worker’s contract.”

(7) In subsection (7)—

(a) in paragraph (a) for “employee” substitute “worker”;

(b) for paragraph (b) substitute—

“(b) if he was not, in the case of an employee, the effective date of termination as defined by section 97 of that Act or in the case of all other workers the date on which the termination takes effect.”

⁽¹³⁾ S.I. 2004/3426, to which there are amendments not relevant to these Regulations.

⁽¹⁴⁾ 2002 c. 22. Section 38 was amended by paragraph 12 of Schedule 5 to the Enterprise Act 2016 (c.12).

18. In section 40 of the Employment Act 2002(15) (interpretation of Part 3), after the definitions of “employer” and “employee” insert—

““worker” has the same meaning as in the Employment Rights Act 1996.”

Date

Name
Minister for Small Business, Consumers and
Corporate Responsibility
Department for Business, Energy and Industrial
Strategy

(15) Section 40 was amended by paragraph 1 of Schedule 1(1) Employment Act 2008 (c.24).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations:

- increase the maximum level of penalty available from £5,000 to £20,000 for aggravated breach of a worker’s employment rights under section 12A of the Employment Tribunals Act 1996 (c.17) (part 2);
- confer the right to a written statement of particulars of employment and associated enforcement provisions upon all workers (currently this right applies only to employees) by amending Part 1 of the Employment Rights Act 1996 (c.18) (parts 3 and 5);
- lower the percentage required for a valid employee request for the employer to negotiate an agreement on informing and consulting its employees. The threshold is lowered from 10% to 2% of the total number of employees employed by the employer. This is achieved by amending the Information and Consultation of Employees Regulations 2004 (“the 2004 Regulations”). The 2004 Regulations impose obligations in respect of information and consultation on an employer with at least 50 employees if a sufficient percentage of its employees submit a valid request (part 4).

In relation to the amendments increasing the maximum level of penalty available for an aggravated breach under section 12A of the Employment Tribunals Act 1996, a full impact assessment has not been produced as no, or no significant, impact on the private, voluntary or public sector is foreseen.

In relation to the amendments conferring the right to written particulars of employment and associated enforcement provisions to all workers in Part 1 of the Employment Rights Act 1996, a full regulatory impact assessment of the effect that the amendments will have on the cost of business and the voluntary sector is available from the Labour Market Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET, and is available alongside the Explanatory Memorandum which is also available alongside the instrument on the www.legislation.gov.uk.

In relation to the amendment reducing the threshold in relation to requests to negotiate information and consultation arrangements under the 2004 Regulations, an impact assessment has not been prepared as no significant impact on individuals or businesses is foreseen.