



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART IV

#### SUNDAY WORKING FOR SHOP AND BETTING WORKERS

##### *Protected shop workers and betting workers*

#### **36 Protected shop workers and betting workers**

- (1) Subject to subsection (5), a shop worker or betting worker is to be regarded as “protected” for the purposes of any provision of this Act if (and only if) subsection (2) or (3) applies to him.
- (2) This subsection applies to a shop worker or betting worker if—
  - (a) on the day before the relevant commencement date he was employed as a shop worker or a betting worker but not to work only on Sunday,
  - (b) he has been continuously employed during the period beginning with that day and ending with the day which, in relation to the provision concerned, is the appropriate date, and
  - (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker or a betting worker.
- (3) This subsection applies to any shop worker or betting worker whose contract of employment is such that under it he—
  - (a) is not, and may not be, required to work on Sunday, and
  - (b) could not be so required even if the provisions of this Part were disregarded.
- (4) Where on the day before the relevant commencement date an employee’s relations with his employer had ceased to be governed by a contract of employment, he shall be regarded as satisfying subsection (2)(a) if—
  - (a) that day fell in a week which counts as a period of employment with that employer under section 212(2) or (3) or under regulations under section 219, and

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- (b) on the last day before the relevant commencement date on which his relations with his employer were governed by a contract of employment, the employee was employed as a shop worker or a betting worker but not to work only on Sunday.
- (5) A shop worker is not a protected shop worker, and a betting worker is not a protected betting worker, if—
  - (a) he has given his employer an opting-in notice on or after the relevant commencement date, and
  - (b) after giving the notice, he has expressly agreed with his employer to do shop work, or betting work, on Sunday or on a particular Sunday.
- (6) In this Act “opting-in notice”, in relation to a shop worker or a betting worker, means written notice, signed and dated by the shop worker or betting worker, in which the shop worker or betting worker expressly states that he wishes to work on Sunday or that he does not object to Sunday working.
- (7) In this Act “the relevant commencement date” means—
  - (a) in relation to a shop worker, 26th August 1994, and
  - (b) in relation to a betting worker, 3rd January 1995.

### **37 Contractual requirements relating to Sunday work**

- (1) Any contract of employment under which a shop worker or betting worker who satisfies section 36(2)(a) was employed on the day before the relevant commencement date is unenforceable to the extent that it—
  - (a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday on or after that date, or
  - (b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday on or after that date.
- (2) Subject to subsection (3), any agreement entered into after the relevant commencement date between a protected shop worker, or a protected betting worker, and his employer is unenforceable to the extent that it—
  - (a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday, or
  - (b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday.
- (3) Where, after giving an opting-in notice, a protected shop worker or a protected betting worker expressly agrees with his employer to do shop work or betting work on Sunday or on a particular Sunday (and so ceases to be protected), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.
- (4) The reference in subsection (2) to a protected shop worker, or a protected betting worker, includes a reference to an employee who although not a protected shop worker, or protected betting worker, at the time when the agreement is entered into is a protected shop worker, or protected betting worker, on the day on which she returns to work in accordance with section 79, or in pursuance of an offer made in the circumstances described in section 96(3), after a period of absence from work occasioned wholly or partly by pregnancy or childbirth.

- (5) For the purposes of section 36(2)(b), the appropriate date—
- (a) in relation to subsections (2) and (3) of this section, is the day on which the agreement is entered into, and
  - (b) in relation to subsection (4) of this section, is the day on which the employee returns to work.

### **38 Contracts with guaranteed hours**

- (1) This section applies where—
- (a) under the contract of employment under which a shop worker or betting worker who satisfies section 36(2)(a) was employed on the day before the relevant commencement date, the employer is, or may be, required to provide him with shop work, or betting work, for a specified number of hours each week,
  - (b) under the contract the shop worker or betting worker was, or might have been, required to work on Sunday before that date, and
  - (c) the shop worker has done shop work, or the betting worker betting work, on Sunday in that employment (whether or not before that day) but has, on or after that date, ceased to do so.
- (2) So long as the shop worker remains a protected shop worker, or the betting worker remains a protected betting worker, the contract shall not be regarded as requiring the employer to provide him with shop work, or betting work, on weekdays in excess of the hours normally worked by the shop worker or betting worker on weekdays before he ceased to do shop work, or betting work, on Sunday.
- (3) For the purposes of section 36(2)(b), the appropriate date in relation to this section is any time in relation to which the contract is to be enforced.

### **39 Reduction of pay etc**

- (1) This section applies where—
- (a) under the contract of employment under which a shop worker or betting worker who satisfies section 36(2)(a) was employed on the day before the relevant commencement date, the shop worker or betting worker was, or might have been, required to work on Sunday before the relevant commencement date,
  - (b) the shop worker has done shop work, or the betting worker has done betting work, on Sunday in that employment (whether or not before that date) but has, on or after that date, ceased to do so, and
  - (c) it is not apparent from the contract what part of the remuneration payable, or of any other benefit accruing, to the shop worker or betting worker was intended to be attributable to shop work, or betting work, on Sunday.
- (2) So long as the shop worker remains a protected shop worker, or the betting worker remains a protected betting worker, the contract shall be regarded as enabling the employer to reduce the amount of remuneration paid, or the extent of the other benefit provided, to the shop worker or betting worker in respect of any period by the relevant proportion.
- (3) In subsection (2) “the relevant proportion” means the proportion which the hours of shop work, or betting work, which (apart from this Part) the shop worker, or betting

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worker, could have been required to do on Sunday in the period (“the contractual Sunday hours”) bears to the aggregate of those hours and the hours of work actually done by the shop worker, or betting worker, in the period.

- (4) Where, under the contract of employment, the hours of work actually done on weekdays in any period would be taken into account in determining the contractual Sunday hours, they shall be taken into account in determining the contractual Sunday hours for the purposes of subsection (3).
- (5) For the purposes of section 36(2)(b), the appropriate date in relation to this section is the end of the period in respect of which the remuneration is paid or the benefit accrues.

### *Opting-out of Sunday work*

#### **40 Notice of objection to Sunday working**

- (1) A shop worker or betting worker to whom this section applies may at any time give his employer written notice, signed and dated by the shop worker or betting worker, to the effect that he objects to Sunday working.
- (2) In this Act “opting-out notice” means a notice given under subsection (1) by a shop worker or betting worker to whom this section applies.
- (3) This section applies to any shop worker or betting worker who under his contract of employment—
  - (a) is or may be required to work on Sunday (whether or not as a result of previously giving an opting-in notice), but
  - (b) is not employed to work only on Sunday.

#### **41 Opted-out shop workers and betting workers**

- (1) Subject to subsection (2), a shop worker or betting worker is to be regarded as “opted-out” for the purposes of any provision of this Act if (and only if)—
  - (a) he has given his employer an opting-out notice,
  - (b) he has been continuously employed during the period beginning with the day on which the notice was given and ending with the day which, in relation to the provision concerned, is the appropriate date, and
  - (c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker or a betting worker.
- (2) A shop worker is not an opted-out shop worker, and a betting worker is not an opted-out betting worker, if—
  - (a) after giving the opting-out notice concerned, he has given his employer an opting-in notice, and
  - (b) after giving the opting-in notice, he has expressly agreed with his employer to do shop work, or betting work, on Sunday or on a particular Sunday.
- (3) In this Act “notice period”, in relation to an opted-out shop worker or an opted-out betting worker, means, subject to section 42(2), the period of three months beginning with the day on which the opting-out notice concerned was given.

## 42 Explanatory statement

- (1) Where a person becomes a shop worker or betting worker to whom section 40 applies, his employer shall, before the end of the period of two months beginning with the day on which that person becomes such a worker, give him a written statement in the prescribed form.
- (2) If—
  - (a) an employer fails to comply with subsection (1) in relation to any shop worker or betting worker, and
  - (b) the shop worker or betting worker, on giving the employer an opting-out notice, becomes an opted-out shop worker or an opted-out betting worker,section 41(3) has effect in relation to the shop worker or betting worker with the substitution for “three months” of “one month”.
- (3) An employer shall not be regarded as failing to comply with subsection (1) in any case where, before the end of the period referred to in that subsection, the shop worker or betting worker has given him an opting-out notice.
- (4) Subject to subsection (6), the prescribed form in the case of a shop worker is as follows—

### “SATUTORY RIGHTS IN RELATION TO SUNDAY SHOP WORK

You have become employed as a shop worker and are or can be required under your contract of employment to do the Sunday work your contract provides for.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to work in or about a shop on any Sunday on which the shop is open once three months have passed from the date on which you gave the notice.

Your notice must—

- be in writing;
- be signed and dated by you;
- say that you object to Sunday working.

For three months after you give the notice, your employer can still require you to do all the Sunday work your contract provides for. After the three month period has ended, you have the right to complain to an industrial tribunal if, because of your refusal to work on Sundays on which the shop is open, your employer—

- dismisses you, or
- does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to work on Sunday or that you do not object to Sunday working and then agreeing with your employer to work on Sundays or on a particular Sunday.”

- (5) Subject to subsection (6), the prescribed form in the case of a betting worker is as follows—

### “STATUTORY RIGHTS IN RELATION TO SUNDAY BETTING WORK

You have become employed under a contract of employment under which you are or can be required to do Sunday betting work, that is to say, work—

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at a track on a Sunday on which your employer is taking bets at the track, or in a licensed betting office on a Sunday on which it is open for business.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to do Sunday betting work once three months have passed from the date on which you gave the notice.

Your notice must—

be in writing;

be signed and dated by you;

say that you object to doing Sunday betting work.

For three months after you give the notice, your employer can still require you to do all the Sunday betting work your contract provides for. After the three month period has ended, you have the right to complain to an industrial tribunal if, because of your refusal to do Sunday betting work, your employer—

dismisses you, or

does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to do Sunday betting work or that you do not object to doing Sunday betting work and then agreeing with your employer to do such work on Sundays or on a particular Sunday.”

- (6) The Secretary of State may by order amend the prescribed forms set out in subsections (4) and (5).

#### **43 Contractual requirements relating to Sunday work**

- (1) Where a shop worker or betting worker gives his employer an opting-out notice, the contract of employment under which he was employed immediately before he gave that notice becomes unenforceable to the extent that it—
- (a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday after the end of the notice period, or
  - (b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday after the end of that period.
- (2) Subject to subsection (3), any agreement entered into between an opted-out shop worker, or an opted-out betting worker, and his employer is unenforceable to the extent that it—
- (a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday after the end of the notice period, or
  - (b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday after the end of that period.
- (3) Where, after giving an opting-in notice, an opted-out shop worker or an opted-out betting worker expressly agrees with his employer to do shop work or betting work on Sunday or on a particular Sunday (and so ceases to be opted-out), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

- (4) The reference in subsection (2) to an opted-out shop worker, or an opted-out betting worker, includes a reference to an employee who although not an opted-out shop worker, or an opted-out betting worker, at the time when the agreement is entered into—
- (a) had given her employer an opting-out notice before that time, and
  - (b) is an opted-out shop worker, or an opted-out betting worker, on the day on which she returns to work in accordance with section 79, or in pursuance of an offer made in the circumstances described in section 96(3), after a period of absence from work occasioned wholly or partly by pregnancy or childbirth.
- (5) For the purposes of section 41(1)(b), the appropriate date—
- (a) in relation to subsections (2) and (3) of this section, is the day on which the agreement is entered into, and
  - (b) in relation to subsection (4) of this section, is the day on which the employee returns to work.