
STATUTORY INSTRUMENTS

1998 No. 1833

The Working Time Regulations 1998

PART IV

MISCELLANEOUS

[^{F1} Enforcement

28.—(1) In this regulation, regulations 29–29E and Schedule 3—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

[^{F2}“2013 Act” means the Energy Act 2013;]

“the Civil Aviation Authority” means the authority referred to in section 2(1) of the Civil Aviation Act 1982;

“code of practice” includes a standard, a specification and any other documentary form of practical guidance;

^{F3}
...

[^{F4}“DVSA” means the Driver and Vehicle Standards Agency;]

“enforcement authority” means the Executive, a local authority, the Civil Aviation Authority [^{F5}, [^{F6}DVSA][^{F7}, the ONR] or the Office of Rail Regulation];

“the Executive” means the Health and Safety Executive referred to in [^{F8}section 10(1)] of the 1974 Act;

“local authority” means—

- (a) in relation to England, a county council so far as they are the council for an area for which there are no district councils, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple;
- (b) in relation to Wales, a county council or a county borough council;
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

[^{F9}“ONR” means the Office for Nuclear Regulation;]

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof) and
- (c) any tent or movable structure;

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“relevant civil aviation worker” means a mobile worker who works mainly on board civil aircraft, excluding any worker to whom regulation 18(2)(b) applies;

[^{F10}“relevant nuclear provisions” means—

- (a) sections 1, 3 to 6, 22 and 24A of the Nuclear Installations Act 1965;
- (b) the provisions of the 2013 Act;
- (c) the provisions of nuclear regulations other than any provision of such regulations identified in accordance with section 74(9) of the 2013 Act as made for the nuclear safeguards purposes;]

[^{F10}“relevant nuclear site” means a site which is—

- (a) a GB nuclear site (within the meaning given by section 68 of the 2013 Act);
- (b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998); or
- (c) a new nuclear build site (within the meaning given in regulation 2A of those Regulations);]

“the relevant requirements” means the following provisions—

- (a) regulations 4(2), 5A(4), 6(2) and (7), 6A, 7(1), (2) and (6), 8, 9 and 27A(4)(a);
- (b) regulation 24, in so far as it applies where regulation 6(1), (2) or (7) is modified or excluded, and
- (c) regulation 24A(2), in so far as it applies where regulations 6(1), (2) or (7) is excluded;

“relevant road transport worker” means a mobile worker to whom one or more of the following applies—

- (a) Council Regulation (EEC) 3820/85,
- (b) the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) of 1st July 1970, and
- (c) the United Kingdom domestic driver’s hours code, which is set out in Part VI of the Transport Act 1968;

“the relevant statutory provisions” means—

- (a) the provisions of the 1974 Act and of any regulations made under powers contained in that Act; and
- (b) while and to the extent that they remain in force, the provisions of the Acts mentioned in Schedule 1 to the 1974 Act and which are specified in the third column of that Schedule and the regulations, orders or other instruments of a legislative character made or having effect under a provision so specified ^{F11}...

^{F11} ...

(2) It shall be the duty of the Executive to make adequate arrangements for the enforcement of the relevant requirements except to the extent that—

- (a) a local authority is made responsible for their enforcement by paragraph (3);
- (b) the Civil Aviation Authority is made responsible for their enforcement by paragraph (5);^{F12}...
- (c) [^{F13}DVSA] is made responsible for their enforcement by paragraph (6);
- [^{F14}(d) the Office of Rail Regulation is made responsible for their enforcement by paragraph (3A)];
- [^{F15}(e) the ONR is made responsible for their enforcement by paragraph (3AA).]

(3) Where the relevant requirements apply in relation to workers employed in premises in respect of which a local authority is responsible, under the Health and Safety (Enforcing Authority) Regulations 1998, for enforcing any of the relevant statutory provisions, it shall be the duty of that authority to enforce those requirements.

[^{F16}(3A) Where the relevant requirements apply in relation to workers employed in the carrying out of any of the activities specified in regulation 3(2) of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 it shall be the duty of the Office of Rail Regulation to enforce those requirements.]

[^{F17}(3AA) Where the relevant requirements apply in relation to workers employed in premises which are or are on a relevant nuclear site, it shall be the duty of the ONR to enforce those requirements.]

(4) The duty imposed on local authorities by paragraph (3) shall be performed in accordance with such guidance as may be given to them by [^{F18}the Executive].

(5) It shall be the duty of the Civil Aviation Authority to enforce the relevant requirements in relation to relevant civil aviation workers.

(6) It shall be the duty of [^{F19}DVSA] to enforce the relevant requirements in relation to relevant road transport workers.

(7) The provisions of Schedule 3 shall apply in relation to the enforcement of the relevant requirements.

^{F20}(8)]

Textual Amendments

- F1** Regs. 28-29E substituted for regs. 28, 29 (1.8.2003) by [The Working Time \(Amendment\) Regulations 2003 \(S.I. 2003/1684\)](#), regs. 1, **10**
- F2** Words in reg. 28(1) inserted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), **Sch. 3 para. 81(2)(a)** (with Sch. 4)
- F3** Words in reg. 28(1) omitted (1.4.2008) by virtue of [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#), art. 1, **Sch. 3** (with art. 21)
- F4** Words in reg. 28(1) inserted (1.4.2014) by [The Driving Standards Agency and the Vehicle and Operator Services Agency \(Merger\) \(Consequential Amendments\) Regulations 2014 \(S.I. 2014/480\)](#), regs. 1, **9(2)(c)** (with reg. 9(5)-(8))
- F5** Words in reg. 28(1) substituted (1.4.2006) by [The Health and Safety \(Enforcing Authority for Railways and Other Guided Transport Systems\) Regulations 2006 \(S.I. 2006/557\)](#), reg. 1, **Sch. para. 7(a)**
- F6** Word in reg. 28(1) substituted (1.4.2014) by [The Driving Standards Agency and the Vehicle and Operator Services Agency \(Merger\) \(Consequential Amendments\) Regulations 2014 \(S.I. 2014/480\)](#), regs. 1, **9(2)(a)** (with reg. 9(5)-(8))
- F7** Words in reg. 28(1) inserted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), **Sch. 3 para. 81(2)(b)** (with Sch. 4)
- F8** Words in reg. 28(1) substituted (1.4.2008) by [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#), art. 1, **Sch. 3** (with art. 21)
- F9** Words in reg. 28(1) inserted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), **Sch. 3 para. 81(2)(c)** (with Sch. 4)

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Changes to legislation: There are currently no known outstanding effects for the Working Time Regulations 1998, PART IV. (See end of Document for details)

- F10** Words in reg. 28(1) inserted (1.4.2014) by The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 (S.I. 2014/469), art. 1(2), **Sch. 3 para. 81(2)(d)** (with Sch. 4)
- F11** Words in reg. 28(1) omitted (1.4.2014) by virtue of The Driving Standards Agency and the Vehicle and Operator Services Agency (Merger) (Consequential Amendments) Regulations 2014 (S.I. 2014/480), regs. 1, **9(2)(b)** (with reg. 9(5)-(8))
- F12** Word in reg. 28(2)(b) omitted (1.4.2006) by virtue of The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (S.I. 2006/557), reg. 1, **Sch. para. 7(b)(i)**
- F13** Word in reg. 28(2)(c) substituted (1.4.2014) by The Driving Standards Agency and the Vehicle and Operator Services Agency (Merger) (Consequential Amendments) Regulations 2014 (S.I. 2014/480), regs. 1, **9(3)** (with reg. 9(5)-(8))
- F14** Reg. 28(2)(d) inserted (1.4.2006) by The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (S.I. 2006/557), reg. 1, **Sch. para. 7(b)(ii)**
- F15** Reg. 28(2)(e) inserted (1.4.2014) by The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 (S.I. 2014/469), art. 1(2), **Sch. 3 para. 81(3)** (with Sch. 4)
- F16** Reg. 28(3A) inserted (1.4.2006) by The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (S.I. 2006/557), reg. 1, **Sch. para. 7(c)**
- F17** Reg. 28(3AA) inserted (1.4.2014) by The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 (S.I. 2014/469), art. 1(2), **Sch. 3 para. 81(4)** (with Sch. 4)
- F18** Words in reg. 28(4) substituted (1.4.2008) by The Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, **Sch. 3** (with art. 21)
- F19** Word in reg. 28(6) substituted (1.4.2014) by The Driving Standards Agency and the Vehicle and Operator Services Agency (Merger) (Consequential Amendments) Regulations 2014 (S.I. 2014/480), regs. 1, **9(4)** (with reg. 9(5)-(8))
- F20** Reg. 28(8) omitted (1.4.2008) by virtue of The Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, **Sch. 3** (with art. 21)

[^{F1} Offences

29.—(1) An employer who fails to comply with any of the relevant requirements shall be guilty of an offence.

(2) The provisions of paragraph (3) shall apply where an inspector is exercising or has exercised any power conferred by Schedule 3.

(3) It is an offence for a person—

- (a) to contravene any requirement imposed by the inspector under paragraph 2 of Schedule 3;
- (b) to prevent or attempt to prevent any other person from appearing before the inspector or from answering any question to which the inspector may by virtue of paragraph 2(2)(e) of Schedule 3 require an answer;
- (c) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as is modified on appeal);
- (d) intentionally to obstruct the inspector in the exercise or performance of his powers or duties;
- (e) to use or disclose any information in contravention of paragraph 8 of Schedule 3;
- (f) to make a statement which he knows to be false or recklessly to make a statement which is false, where the statement is made in purported compliance with a requirement to furnish any information imposed by or under these Regulations.

- (4) An employer guilty of an offence under paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (5) A person guilty of an offence under paragraph (3) shall be liable to the penalty prescribed in relation to that provision by paragraphs (6), (7) or (8) as the case may be.
- (6) A person guilty of an offence under sub-paragraph (3)(a), (b) or (d) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person guilty of an offence under sub-paragraph (3)(c) shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
- (8) A person guilty of an offence under any of the sub-paragraphs of paragraph (3) not falling within paragraphs (6) or (7) above, shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment—
 - (i) if the offence is under sub-paragraph (3)(e), to imprisonment for a term not exceeding two years or a fine or both;
 - (ii) if the offence is not one to which the preceding sub-paragraph applies, to a fine.
- (9) The provisions set out in regulations 29A–29E below shall apply in relation to the offences provided for in paragraphs (1) and (3).]

Textual Amendments

- F1** Regs. 28-29E substituted for regs. 28, 29 (1.8.2003) by [The Working Time \(Amendment\) Regulations 2003 \(S.I. 2003/1684\)](#), regs. 1, **10**

[^{F1}Offences due to fault of other person

29A. Where the commission by any person of an offence is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.]

Textual Amendments

- F1** Regs. 28-29E substituted for regs. 28, 29 (1.8.2003) by [The Working Time \(Amendment\) Regulations 2003 \(S.I. 2003/1684\)](#), regs. 1, **10**

[^{F1}Offences by bodies corporate

29B.—(1) Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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(2) Where the affairs of a body corporate are managed by its members, the preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.]

Textual Amendments

F1 Regs. 28-29E substituted for regs. 28, 29 (1.8.2003) by [The Working Time \(Amendment\) Regulations 2003 \(S.I. 2003/1684\)](#), regs. 1, **10**

[^{F1}Restriction on institution of proceedings in England and Wales

29C. Proceedings for an offence shall not, in England and Wales, be instituted except by an inspector or by or with the consent of the Director of Public Prosecutions.]

Textual Amendments

F1 Regs. 28-29E substituted for regs. 28, 29 (1.8.2003) by [The Working Time \(Amendment\) Regulations 2003 \(S.I. 2003/1684\)](#), regs. 1, **10**

[^{F1}Prosecutions by inspectors

29D.—(1) An inspector, if authorised in that behalf by an enforcement authority, may, although not of counsel or a solicitor, prosecute before a magistrate's court proceedings for an offence under these Regulations.

(2) This regulation shall not apply to Scotland.]

Textual Amendments

F1 Regs. 28-29E substituted for regs. 28, 29 (1.8.2003) by [The Working Time \(Amendment\) Regulations 2003 \(S.I. 2003/1684\)](#), regs. 1, **10**

[^{F1}Power of court to order cause of offence to be remedied

29E.—(1) Where a person is convicted of an offence in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under these Regulations in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).]

Textual Amendments

F1 Regs. 28-29E substituted for regs. 28, 29 (1.8.2003) by [The Working Time \(Amendment\) Regulations 2003 \(S.I. 2003/1684\)](#), regs. 1, **10**

Remedies

- 30.**—(1) A worker may present a complaint to an employment tribunal that his employer—
- (a) has refused to permit him to exercise any right he has under—
 - ^{F21}(i) regulation 10(1) or (2), 11(1), (2) or (3), 12(1) or (4), 13 or 13A;]
 - (ii) regulation 24, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is modified or excluded; ^{F22}...
 - ^{F23}(iii) regulation 24A, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is excluded; or
 - (iv) regulation 25(3), 27A(4)(b) or 27(2); or]
 - (b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).
- (2) [^{F24}Subject to [^{F25}regulations 30A and 30B], an employment tribunal] shall not consider a complaint under this regulation unless it is presented—
- (a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.
- ^{F26}(2A) Where the period within which a complaint must be presented in accordance with paragraph (2) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (2).]
- (3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—
- (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the worker.
- (4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
- (a) the employer's default in refusing to permit the worker to exercise his right, and
 - (b) any loss sustained by the worker which is attributable to the matters complained of.
- (5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 14(2) or 16(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.

Textual Amendments

- F21** Reg. 30(1)(a)(i) substituted (1.10.2007) by [The Working Time \(Amendment\) Regulations 2007 \(S.I. 2007/2079\)](#), regs. 1(2), **2(11)**
- F22** Word in reg. 30(1)(a)(ii) omitted (1.8.2003) by virtue of [The Working Time \(Amendment\) Regulations 2003 \(S.I. 2003/1684\)](#), regs. 1, **11**
- F23** Reg. 30(1)(a)(iii)(iv) substituted for reg. 30(1)(a)(iii) (1.8.2003) by [The Working Time \(Amendment\) Regulations 2003 \(S.I. 2003/1684\)](#), regs. 1, **11**

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- F24** Words in reg. 30(2) substituted (with application in accordance with regs. 3, 4 of the amending S.I.) by [The Cross-Border Mediation \(EU Directive\) Regulations 2011 \(S.I. 2011/1133\)](#), regs. 2, **68**
- F25** Words in reg. 30(2) substituted (6.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2014 \(S.I. 2014/386\)](#), art. 1, **Sch. para. 3**
- F26** Reg. 30(2A) inserted (1.10.2004) by [The Employment Act 2002 \(Dispute Resolution\) Regulations 2004 \(S.I. 2004/752\)](#), regs. 1, **17(f)** (with reg. 18)

Modifications etc. (not altering text)

- C1** Reg. 30 restricted (1.10.2004) by [Employment Act 2002 \(c. 22\)](#), ss. 32, 55(2), **Sch. 4**; S.I. 2004/1717, art. 2(2)

[F27] Extension of time limits because of mediation in certain cross-border disputes

30A.—(1) In this regulation—

- (a) “Mediation Directive” means Directive [2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters;
- (b) “mediation” has the meaning given by article 3(a) of the Mediation Directive;
- (c) “mediator” has the meaning given by article 3(b) of the Mediation Directive; and
- (d) “relevant dispute” means a dispute to which article 8(1) of the Mediation Directive applies (certain cross-border disputes).

(2) Paragraph (3) applies where—

- (a) a three month time limit is set by regulation 30(2) in relation to the whole or part of a relevant dispute;
- (b) a mediation in relation to the relevant dispute starts before the period expires; and
- (c) if not extended by this regulation, the time limit would expire before the mediation ends or less than four weeks after it ends.

(3) The time limit expires instead at the end of four weeks after the mediation ends (subject to paragraph (4)).

(4) If a time limit mentioned in paragraph (2)(a) has been extended by this article, paragraphs (2) and (3) apply to the extended time limit as they apply to a time limit mentioned in paragraph (2)(a).

(5) Where more than one time limit applies in relation to a relevant dispute, the extension by paragraph (3) of one of those time limits does not affect the others.

(6) For the purposes of this regulation, a mediation starts on the date of the agreement to mediate that is entered into by the parties and the mediator.

(7) For the purposes of this regulation, a mediation ends on the date of the first of these to occur—

- (a) the parties reach an agreement in resolution of the relevant dispute;
- (b) a party completes the notification of the other parties that it has withdrawn from the mediation;
- (c) a party to whom a qualifying request is made fails to give a response reaching the other parties within 14 days of the request;
- (d) the parties, after being notified that the mediator’s appointment has ended (by death, resignation or otherwise), fail to agree within 14 days to seek to appoint a replacement mediator; or
- (e) the mediation otherwise comes to an end pursuant to the terms of the agreement to mediate.

(8) For the purpose of paragraph (7), a qualifying request is a request by a party that another (A) confirm to all parties that A is continuing with the mediation.

(9) In the case of any relevant dispute, references in this regulation to a mediation are references to the mediation so far as it relates to that dispute, and references to a party are to be read accordingly.

(10) Where the tribunal has the power under regulation 30(2)(b) to extend a period of limitation, the power is exercisable in relation to the period of limitation as extended by this regulation.]

Textual Amendments

F27 Reg. 30A inserted (with application in accordance with regs. 3, 4 of the amending S.I.) by [The Cross-Border Mediation \(EU Directive\) Regulations 2011 \(S.I. 2011/1133\)](#), regs. 2, **69**

[^{F28} Extension of time limit to facilitate conciliation before institution of proceedings

30B.—(1) In this regulation—

- (a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
- (b) Day B is the day on which the worker concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(2) In working out when the time limit set by regulation 30(2)(a) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(3) If the time limit set by regulation 30(2)(a) would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(4) The power conferred on the employment tribunal by regulation 30(2)(b) to extend the time limit set by paragraph (2)(a) of that regulation is exercisable in relation to that time limit as extended by this regulation.]

Textual Amendments

F28 Reg. 30B inserted (6.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2014 \(S.I. 2014/386\)](#), art. 1, **Sch. para. 4**

Right not to suffer detriment

31.—(1) After section 45 of the 1996 Act there shall be inserted—

“45A Working time cases.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the ^{M1}Working Time Regulations 1998,
- (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

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- (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,
 - (d) being—
 - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
 - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,
 performed (or proposed to perform) any functions or activities as such a representative or candidate,
 - (e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or
 - (f) alleged that the employer had infringed such a right.
- (2) It is immaterial for the purposes of subsection (1)(e) or (f)—
- (a) whether or not the worker has the right, or
 - (b) whether or not the right has been infringed,
- but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.
- (3) It is sufficient for subsection (1)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.
- (4) This section does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X, unless the dismissal is in circumstances in which, by virtue of section 197, Part X does not apply.”
- (2) After section 48(1) of the 1996 Act there shall be inserted the following subsection—
- “(1ZA) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 45A.”
- (3) In section 49 of the 1996 Act ^{M2} (remedies)—
- (a) in subsection (2), for “subsection (6)” there shall be substituted “ subsections (5A) and (6) ”, and
 - (b) after subsection (5), there shall be inserted—
 - “(5A) Where—
 - (a) the complaint is made under section 48 (1ZA),
 - (b) the detriment to which the worker is subjected is the termination of his worker’s contract, and
 - (c) that contract is not a contract of employment,
 any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 101A.”
- (4) In section 192(2) of the 1996 Act (provisions applicable in relation to service in the armed forces), after paragraph (a) there shall be inserted—
- “(aa) in Part V, section 45A, and sections 48 and 49 so far as relating to that section.”.
- (5) In sections 194(2)(c), 195(2)(c) and 202(2)(b) of the 1996 Act, for “sections 44 and 47” there shall be substituted “ sections 44, 45A and 47 ”.

(6) In section 200(1) of the 1996 Act (which lists provisions of the Act which do not apply to employment in police service), after “45,” there shall be inserted “ 45A, ”.

(7) In section 205 of the 1996 Act (remedy for infringement of certain rights), after subsection (1) there shall be inserted the following subsection—

“(1ZA) In relation to the right conferred by section 45A, the reference in subsection (1) to an employee has effect as a reference to a worker.”

Marginal Citations

M1 [S.I. 1998/1833](#)

M2 Section 49 of the 1996 Act was amended by the [Public Interest Disclosure Act 1998 \(c.23\)](#), [section 4](#).

Unfair dismissal

32.—(1) After section 101 of the 1996 Act there shall be inserted the following section—

“101A Working time cases.

101A. An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the ^{M3}Working Time Regulations 1998,
- (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
- (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or
- (d) being—
 - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
 - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate.”

(2) In section 104 of the 1996 Act (right of employees not to be unfairly dismissed for asserting particular rights) in subsection (4)—

(a) at the end of paragraph (b), the word “and” shall be omitted, and

(b) after paragraph (c), there shall be inserted the words—

“and

(d) the rights conferred by the ^{M4}Working Time Regulations 1998.”

(3) In section 105 of the 1996 Act (redundancy as unfair dismissal), after subsection (4) there shall be inserted the following subsection—

“(4A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 101A.”

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- (4) In sections 108(3) and 109(2) of the 1996 Act, after paragraph (d) there shall be inserted—
“(dd) section 101A applies,”.
- (5) In sections 117(4)(b), 118(3), 120(1), 122(3), 128(1)(b) and 129(1) of the 1996 Act, after “100(1)(a) and (b),” there shall be inserted “ 101A(d), ”.
- (6) In section 202(2) (cases where disclosure of information is restricted on ground of national security)—
(a) in paragraph (g)(i), after “100” there shall be inserted “ , 101A(d) ”, and
(b) in paragraph (g)(ii), after “of that section,” there shall be inserted “ or by reason of the application of subsection (4A) in so far as it applies where the reason (or, if more than one, the principal reason) for which an employee was selected for dismissal was that specified in section 101A(d) ”.
- (7) In section 209(2) of the 1996 Act (which lists provisions excluded from the scope of the power to amend the Act by order), after “101,” in paragraph (e) there shall be inserted “ 101A, ”.
- (8) In sections 237(1A) and 238(2A) of the Trade Union and Labour Relations (Consolidation) Act 1992 ^{M5} (cases where employee can complain of unfair dismissal notwithstanding industrial action at time of dismissal), after “100” there shall be inserted “ , 101A(d) ”.
- (9) In section 10(5)(a) of the Employment Tribunals Act 1996 ^{M6} (cases where Minister’s certificate is not conclusive evidence that action was taken to safeguard national security), after “100” there shall be inserted “ , 101A(d) ”.

Marginal Citations

M3 [S.I. 1998/1833](#)

M4 [S.I. 1998/1833](#).

M5 [1992 c.52](#): subsection (1A) of section 237 and subsection (2A) of section 238 were inserted by the [Trade Union Reform and Employment Rights Act 1993 \(c.19\)](#), [Schedule 8](#), paragraphs 76 and 77.

M6 [1996 c.17](#); section 1(2) of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c.8\)](#) provides for the Industrial Tribunals Act 1996 to be cited as the Employment Tribunals Act 1996.

Conciliation

33. In section 18(1) of the Employment Tribunals Act 1996 (cases where conciliation provisions apply)—

(a) at the end of paragraph (e), the word “or” shall be omitted, and

(b) after paragraph (f), there shall be inserted the words—

“or

(ff) under regulation 30 of the ^{M7}Working Time Regulations 1998,”.

Marginal Citations

M7 [S.I. 1998/1833](#).

Appeals

34. In section 21 of the Employment Tribunals Act 1996 (jurisdiction of the Employment Appeal Tribunal)—

- (a) at the end of subsection (1) (which confers jurisdiction by reference to Acts under or by virtue of which decisions are made) there shall be inserted—
“or under the ^{M8}Working Time Regulations 1998.”;
- (b) in subsection (2), after “the Acts listed” there shall be inserted—
“or the Regulations referred to”.

Marginal Citations

M8 S.I. 1998/1833.

Restrictions on contracting out

35.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or
- (b) to preclude a person from bringing proceedings under these Regulations before an employment tribunal.

(2) Paragraph (1) does not apply to—

- (a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under [^{F29}any of sections 18A to 18C] of the Employment Tribunals Act 1996 (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within [^{F30}section 18(1)(j)] of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating [^{F31}settlement] agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating [^{F32}settlement] agreements under these Regulations are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,
- (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal,
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,
- (e) the agreement must identify the adviser, and
- (f) the agreement must state that the conditions regulating [^{F32}settlement] agreements under these Regulations are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or

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- (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the worker—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
 - (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer, or
 - (c) in the case of a person within paragraph (4)(c), if the worker makes a payment for the advice received from him.
- (6) In paragraph (4)(a), “qualified lawyer” means—
- (a) as respects England and Wales, [^{F33}a person who, for the purposes of the Legal Services Act 2007), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)]; and
 - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- [^{F34}(6A) A person shall be treated as being a qualified lawyer within paragraph (6)(a) if he is a Fellow of the Institute of Legal Executives [^{F35}practising in a solicitor’s practice (including a body recognised under section 9 of the Administration of Justice Act 1985)].]
- (7) For the purposes of paragraph (5) any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control; or
 - (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

Textual Amendments

- F29** Words in [reg. 35\(2\)\(a\)](#) substituted (6.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2014 \(S.I. 2014/386\)](#), art. 1, [Sch. para. 5](#)
- F30** Words in [reg. 35\(2\)\(b\)](#) substituted (6.4.2014) by [The Employment Tribunals Act 1996 \(Application of Conciliation Provisions\) Order 2014 \(S.I. 2014/431\)](#), art. 1, [Sch. para. 19](#)
- F31** Word in [reg. 35\(2\)](#) substituted (30.8.2013) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2013 \(S.I. 2013/1956\)](#), art. 1, [Sch. para. 2](#)
- F32** Word in [reg. 35\(3\)](#) substituted (30.8.2013) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2013 \(S.I. 2013/1956\)](#), art. 1, [Sch. para. 2](#)
- F33** Words in [reg. 35\(6\)\(a\)](#) substituted (1.1.2010) by [The Legal Services Act 2007 \(Consequential Amendments\) Order 2009 \(S.I. 2009/3348\)](#), arts. 2(1), 23, [Sch. 2](#)
- F34** [Reg. 35\(6A\)](#) inserted (1.10.2004) by [The Working Time Regulations 1998 \(Amendment\) Regulations 2004 \(S.I. 2004/2516\)](#), regs. 1(1), [2](#)
- F35** Words in [reg. 35\(6A\)](#) substituted (16.12.2009) by [The Legal Services Act 2007 \(Consequential Amendments\) Order 2009 \(S.I. 2009/3348\)](#), arts. 2(2), 22, [Sch. 1](#)

[^{F36}**35A.**—(1) The Secretary of State shall, after consulting persons appearing to him to represent the two sides of industry, arrange for the publication, in such form and manner as he considers appropriate, of information and advice concerning the operation of these Regulations.

- (2) The information and advice shall be such as appear to him best calculated to enable employers and workers affected by these Regulations to understand their respective rights and obligations under them.]

Textual Amendments

F36 Reg. 35A inserted (17.12.1999) by [The Working Time Regulations 1999 \(S.I. 1999/3372\)](#), regs. 1(1), **5**

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Changes to legislation:

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