
EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of these Regulations makes the right to a written statement of particulars of employment apply when an individual begins employment (a day 1 right). Currently the written statement of particulars of employment is only required to be given by the employer not later than two months after the beginning of the employment. The regulations provide that employers can decide to provide particulars in instalments providing all are provided within 2 months and the majority are provided when the individual begins employment. Part 2 also inserts additional matters particulars of which must be included in the written statement.

In relation to the amendments conferring a day 1 right to written particulars of employment and additional provisions to individuals 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.

Part 3 of these Regulations amends the Working Time Regulations 1998. The Working Time Regulations 1998 implement Council [Directive 2003/88/EC](#) (O.J. No L229 18.11.2003, p.9) (which consolidates [Directive 93/104/EC](#) (O.J. No. L307, 13.12.93, p18) as amended by Council [Directive 2000/34/EC](#) (O.J. No L195, 01.08.2000, p.41) as from 2 August 2004).

The Working Time Regulations 1998 entitle workers to paid annual leave (amongst other things). Regulation 16(2) of those Regulations specifies that the pay due is calculated by applying sections 221 to 224 of the Employment Rights Act 1996 (c. 18), which provide for the calculation of a week's pay. The application of those sections is subject to specified modifications set out in regulation 16(3). These Regulations amend regulation 16(3) to change the reference period that applies for calculating an average week's pay where a worker has variable remuneration, either because there are normal working hours but the remuneration varies with the amount of work done or the time the work is done, or because the worker does not have normal working hours. Where a worker has been employed by their employer for at least 52 weeks, the reference period is increased from 12 weeks to 52 weeks. Where a worker has been employed by their employer for less than 52 weeks, the reference period is the number of weeks for which the worker has been employed.

Regulation 16(3) is also amended so that where earlier weeks must be brought into account because the reference period contains weeks in which no remuneration was payable, no account is taken of weeks preceding the 104 weeks before the beginning of the period of leave. Where this gives fewer than 52 weeks to take into account, the reference period is reduced to that lower number of weeks.

Where applying sections 221 to 224 as modified by regulation 16(3) gives no weeks to take into account, a week's pay is not calculated by applying those sections, but is instead the amount which fairly represents a week's pay, having regard to certain considerations specified in section 228(3).

A full regulatory impact assessment has not been produced for Part 3 as it has only marginal, if any, impact on the costs of business, charities or voluntary bodies.