

**Status:** Point in time view as at 15/11/2010.

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## SCHEDULES

### [<sup>F1</sup>SCHEDULE 8A

#### RIGHTS OF BETTING WORKERS AS RESPECTS SUNDAY WORKING

F1 2004 NI 1

#### *Interpretation*

1.—(1) In this Schedule “betting worker” means an employee who, under his contract of employment, is or may be required to do betting work.

(2) In this Schedule “betting work” means work at a track for a bookmaker on a day on which the bookmaker acts as such at the track, being work which consists of or includes dealing with betting transactions.

(3) In this Schedule “bookmaker” means any person who—

- (a) whether on his own account or as servant or agent of any other person carries on, whether occasionally or regularly, the business of receiving or negotiating bets or conducting pool betting operations; or
- (b) by way of business in any manner holds himself out, or permits himself to be held out as a person who receives or negotiates bets or conducts such operations.

(4) In this Schedule—

“commencement date” means the day on which Schedule 1 to the Betting and Gaming (Northern Ireland) Order 2004 comes into operation;

“notice period”, in relation to an opted-out betting worker, has the meaning given by paragraph 7(3);

“opted-out”, in relation to a betting worker, shall be construed in accordance with paragraph 7(1) and (2);

“opting-in notice”, in relation to a betting worker, has the meaning given by paragraph 2(6);

“opting-out notice”, in relation to a betting worker, has the meaning given by paragraph 6(2); and

“protected”, in relation to a betting worker, shall be construed in accordance with paragraph 2(1) to (5).

(5) This Schedule shall be construed as one with the Employment Rights (Northern Ireland) Order 1996 (NI 16), referred to in this Schedule as “the Employment Rights Order”.

(6) Chapter III of Part I of the Employment Rights Order (computation of period of continuous employment) shall have effect for the purposes of this Schedule as it has effect for the purposes of that Order.

#### *Protected betting workers*

2.—(1) Subject to sub-paragraph (5), a betting worker is to be regarded as “protected” for the purposes of any provision of this Schedule if (and only if) sub-paragraph (2) or (3) applies to him.

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- (2) This sub-paragraph applies to any betting worker if—
  - (a) on the day before the commencement date, he was employed as 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 betting worker.
- (3) This sub-paragraph applies to any 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 Schedule were disregarded.
- (4) Where on the day before the commencement date an employee's relations with his employer have ceased to be governed by a contract of employment, he shall be regarded as satisfying sub-paragraph (2)(a) if—
  - (a) that day fell in a week which counts as a period of employment with that employer under Article 8(3) of the Employment Rights Order or under regulations under Article 15 of that Order; and
  - (b) on the last day before the commencement date on which his relations with his employer were governed by a contract of employment, the employee was employed as a betting worker, but not to work only on Sunday.
- (5) A betting worker is not a protected betting worker if—
  - (a) he has given his employer an opting-in notice on or after the commencement date; and
  - (b) after giving the notice, he has expressly agreed with his employer to do betting work on Sunday or on a particular Sunday.
- (6) In this Schedule “opting-in notice”, in relation to a betting worker, means written notice, signed and dated by the betting worker, in which the betting worker expressly states that he wishes to work on Sunday or that he does not object to Sunday working.

*Contractual requirements relating to Sunday work*

- 3.—**(1) Any contract of employment under which a betting worker who satisfies paragraph 2(2) (a) was employed on the day before the commencement date is unenforceable to the extent that it—
  - (a) requires the betting worker to do betting work on Sunday on or after that date; or
  - (b) requires the employer to provide the betting worker with betting work on Sunday on or after that date.
- (2) Subject to paragraph (3), any agreement entered into after the commencement date between a protected betting worker and his employer is unenforceable to the extent that it—
  - (a) requires the betting worker to do betting work on Sunday; or
  - (b) requires the employer to provide the betting worker with betting work on Sunday.
- (3) Where, after giving an opting-in notice, a protected betting worker expressly agrees with his employer to do 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) For the purposes of paragraph 2(2)(b), the appropriate date in relation to this paragraph is the day on which the agreement is entered into.

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### *Contracts with guaranteed hours*

4.—(1) This paragraph applies where—

- (a) under the contract of employment under which a betting worker who satisfies paragraph 2(2)(a) was employed on the day before the commencement date, the employer is, or may be, required to provide him with betting work for a specified number of hours each week;
- (b) under the contract the betting worker was, or might have been, required to work on Sunday before the commencement date; and
- (c) the betting worker has done betting work on Sunday in that employment (whether or not before the commencement date) but has, on or after that date ceased to do so.

(2) So long as the betting worker remains a protected betting worker, the contract shall not be regarded as requiring the employer to provide him with betting work on weekdays in excess of the hours normally worked by the betting worker on weekdays before he ceased to do betting work on Sunday.

(3) For the purposes of paragraph 2(2)(b), the appropriate date in relation to this paragraph is any time in relation to which the contract is to be enforced.

#### *Reduction of pay, etc.*

5.—(1) This paragraph applies where—

- (a) under the contract of employment under which a betting worker who satisfies paragraph 2(2)(a) was employed on the day before the commencement date, the betting worker was, or might have been, required to work on Sunday before the commencement date;
- (b) the betting worker has done betting work on Sunday in that employment (whether or not before the commencement 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 betting worker was intended to be attributable to betting work on Sunday.

(2) So long as 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 betting worker in respect of any period by the relevant proportion.

(3) In sub-paragraph (2) “the relevant proportion” means the proportion which the hours of betting work which (apart from this Schedule) the betting 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 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 sub-paragraph (3).

(5) For the purposes of paragraph 2(2)(b), the appropriate date in relation to this paragraph is the end of the period in respect of which the remuneration is paid or the benefit accrues.

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

6.—(1) A betting worker to whom this paragraph applies may at any time give his employer written notice, signed and dated by the betting worker, to the effect that he objects to Sunday working.

(2) In this Schedule “opting-out notice” means a notice given under sub-paragraph (1) by a betting worker to whom this paragraph applies.

(3) This paragraph applies to any betting worker who under his contract of employment—

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- (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.

Meaning of “opted-out betting worker”

7.—(1) Subject to sub-paragraph (2), a betting worker is to be regarded as “opted-out” for the purposes of this Schedule 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 betting worker.

(2) 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 betting work on Sunday or on a particular Sunday.

(3) In this Schedule “notice period”, in relation to an opted-out betting worker, means, subject to paragraph 8(2), the period of three months beginning with the day on which the opting-out notice concerned was given.

*Explanatory statement*

8.—(1) Where a person becomes a betting worker to whom paragraph 6 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 sub-paragraph (1) in relation to any betting worker; and
- (b) the betting worker, on giving the employer an opting-out notice, becomes an opted-out betting worker,

paragraph 7(3) has effect in relation to the betting worker with the substitution for “three months” of “one month”.

(3) An employer shall not be regarded as failing to comply with sub-paragraph (1) in any case where, before the end of the period referred to in that sub-paragraph, the betting worker has given him an opting-out notice.

(4) Subject to sub-paragraph (5), the prescribed form is as follows—

“STATUTORY RIGHTS IN RELATION TO SUNDAY BETTING WORK

You have become employed under your contract of employment to do Sunday betting work, that is to say, work at a track on a Sunday on which your employer is taking bets at the track.

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;

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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.”

(5) The Department for Employment and Learning may by order subject to negative resolution amend the prescribed form set out in sub-paragraph (4).

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

**9.—(1)** Where a 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 betting worker to do betting work on Sunday after the end of the notice period; or

(b) requires the employer to provide the betting worker with betting work on Sunday after the end of that period.

(2) Subject to sub-paragraph (3), any agreement entered into between an opted-out betting worker and his employer is unenforceable to the extent that it—

(a) requires the betting worker to do betting work on Sunday after the end of the notice period; or

(b) requires the employer to provide 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 betting worker expressly agrees with his employer to do 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) For the purposes of paragraph 7(1)(b), the appropriate date in relation to this paragraph is the day on which the agreement is entered into.

#### *Right not to suffer detriment for refusing Sunday work*

**10.—(1)** An employee who is a protected betting worker or an opted-out betting 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 employee refused (or proposed to refuse) to do betting work on Sunday or on a particular Sunday.

(2) Sub-paragraph (1) does not apply to anything done in relation to an opted-out betting worker on the ground that he refused (or proposed to refuse) to do betting work on any Sunday or Sundays falling before the end of the notice period.

(3) An employee who is a betting 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 employee gave (or proposed to give) an opting-out notice to his employer.

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(4) Sub-paragraphs (1) and (3) do not apply where the detriment in question amounts to dismissal (within the meaning of Part XI of the Employment Rights Order).

(5) For the purposes of this paragraph a betting worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—

- (a) a failure to pay remuneration in respect of betting work on a Sunday which he has not done;
- (b) a failure to provide him with any other benefit, where that failure results from the application (in relation to a Sunday on which the employee has not done betting work) of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee; or
- (c) a failure to provide him with any work, remuneration or other benefit which by virtue of paragraph 4 or 5 the employer is not obliged to provide.

(6) Where an employer offers to pay a sum specified in the offer to any one or more employees—

- (a) who are protected betting workers or opted-out betting workers; or
- (b) who under their contracts of employment are not obliged to do betting work on Sunday,

if they agree to do betting work on Sunday or on a particular Sunday sub-paragraphs (7) and (8) apply.

(7) An employee to whom the offer is not made is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to make the offer to him or to pay him the sum specified in the offer.

(8) An employee who does not accept the offer is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to pay him the sum specified in the offer.

(9) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the date of the act or failure to act.

(10) For the purposes of sub-paragraph (9)—

- (a) where an act extends over a period, the “date of the act” means the first day of that period; and
- (b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(11) Articles 71 and 72 of the Employment Rights Order (which relate to proceedings brought by an employee or, as the case may be, worker on the ground that he has been subjected to a detriment in contravention of Article 68, 69, 70, 70A, 70B, 70C or 70D of that Order) shall have effect as if the reference in Article 71 to those Articles included a reference to this paragraph.

(12) Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) (conciliation) has effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings, arising out of a contravention or alleged contravention of this paragraph.

(13) The remedy of an employee for infringement of the right conferred by this paragraph is by way of proceedings as mentioned in sub-paragraph (11) and not otherwise.

(14) Articles 248 and 249 of the Employment Rights Order (death of employee or employer) apply in relation to this paragraph as they apply in relation to provisions of the Employment Rights Order listed in Article 248(2) of that Order.

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### *Right not to be dismissed for refusing Sunday work*

**11.—**(1) Where an employee who is a protected betting worker or an opted-out betting worker is dismissed, he shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he refused, or proposed to refuse, to do betting work on Sunday or on a particular Sunday.

(2) Sub-paragraph (1) does not apply in relation to an opted-out betting worker where the reason (or principal reason) for the dismissal is that he refused, or proposed to refuse, to do betting work on any Sunday or Sundays falling before the end of the notice period.

(3) A betting worker who is dismissed shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the betting worker gave, or proposed to give, an opting-out notice to the employer.

(4) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the effective date of termination.

**12.—**(1) An employee who is dismissed shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer; and
- (c) it is shown that sub-paragraph (2) applies.

(2) This sub-paragraph applies if either—

- (a) the employee was a protected betting worker or an opted-out betting worker and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in sub-paragraph (1) of paragraph 11 (read with sub-paragraph (2) of that paragraph); or
- (b) the employee was a betting worker and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in sub-paragraph (3) of that paragraph.

(3) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the effective date of termination.

**13.** Articles 140 and 141 of the Employment Rights Order (qualifying period of employment and upper age limit) and Article 142(1) of that Order (dismissal procedures agreements) do not apply if—

- (a) sub-paragraph (1) of paragraph 11 (read with sub-paragraph (2) of that paragraph) or sub-paragraph (3) of that paragraph applies; or
- (b) paragraph 12 applies.

### *Restrictions on contracting out of Schedule*

**14.—**(1) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Schedule; or
- (b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this Schedule.

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(2) Sub-paragraph (1) does not apply to an agreement to refrain from presenting or continuing with a complaint where—

- (a) the Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation); or
- (b) the conditions regulating compromise agreements (as set out in Article 245(3) of the Employment Rights Order) are satisfied in relation to the agreement.

*Dismissal on grounds of assertion of statutory right*

**15.** In Article 135 of the Employment Rights Order (dismissal on grounds of assertion of statutory right) in paragraph (4)(a) after “Order 1997” insert “ or Schedule 8A to the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 ”.

*Power to confer rights on individuals*

**16.** In Article 24 of the Employment Relations (Northern Ireland) Order 1999 (NI 9) (power to confer rights on individuals) in paragraph (1), at the beginning of sub-paragraph (d) insert “ the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 or ”.]



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