



Employment Rights Act 1996

1996 CHAPTER 18

PART IV

SUNDAY WORKING FOR SHOP AND BETTING WORKERS

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.

Extent Information

- E1** S. 40, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by [Sunday Working \(Scotland\) Act 2003 \(c. 18\), ss. 1\(5\), 3; S.I. 2004/958, art. 2](#)

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,

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- (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.
- [^{F1}(3) In this Act “notice period”, in relation to an opted-out shop worker or an opted-out betting worker, means—
- (a) in the case of an opted-out shop worker who does shop work in or about a large shop, the period of one month beginning with the day on which the opting-out notice concerned was given;
 - (b) in any other case, the period of three months beginning with that day.

This subsection is subject to sections 41D(2) and 42(2).]

Extent Information

- E2** S. 41, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by [Sunday Working \(Scotland\) Act 2003 \(c. 18\)](#), **ss. 1(5), 3**; [S.I. 2004/958](#), **art. 2**

Textual Amendments

- F1** S. 41(3) substituted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), **Sch. 5 para. 2**

Modifications etc. (not altering text)

- C1** S. 41(3) modified (E.W.) (1.5.2012) by [Sunday Trading \(London Olympic Games and Paralympic Games\) Act 2012 \(c. 12\)](#), **s. 3(3)**
- C2** S. 41(3) modified (E.W.) (1.5.2012) by [Sunday Trading \(London Olympic Games and Paralympic Games\) Act 2012 \(c. 12\)](#), **ss. 2(1), 3(1)**

[^{F2}41A Notice of objection by shop workers to working additional hours on Sunday

- (1) A shop worker may at any time give to his or her employer a written notice, signed and dated by the shop worker, to the effect that he or she objects to doing shop work for additional hours on Sunday.
- (2) In this Part—
- “additional hours” means any number of hours of shop work that a shop worker is (or could be) required to work under a contract of employment on Sunday that are (or would be) in excess of the shop worker's normal Sunday working hours;
- “objection notice” means a notice given under subsection (1).

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- (3) The “normal Sunday working hours” of a shop worker are to be calculated in accordance with regulations.
- (4) Regulations under this section may provide—
 - (a) for the calculation to be determined (for example) by reference to the average number of hours that the shop worker has worked on Sundays during a period specified or described in the regulations;
 - (b) for a calculation of the kind mentioned in paragraph (a) to be varied in special cases;
 - (c) for the right to give an objection notice not to be exercisable in special cases (and subsection (1) is subject to provision made by virtue of this paragraph).
- (5) Provision under subsection (4)(b) or (c) may, in particular, include provision—
 - (a) about how the calculation of normal Sunday working hours is to be made in the case of a shop worker who has not been employed for a sufficient period of time to enable a calculation to be made as otherwise provided for in the regulations;
 - (b) for the right to give an objection notice not to be exercisable by such a shop worker until he or she has completed a period of employment specified or described in the regulations.
- (6) But regulations under this section may not include provision preventing a shop worker who has been continuously employed under a contract of employment for a period of one year or more from giving to the employer an objection notice.
- (7) Regulations under this section may make different provision for different purposes.

Textual Amendments

F2 Ss. 41A-41D inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), [Sch. 5 para. 3](#)

41B Explanatory statement: persons who become shop workers

- (1) This section applies where a person becomes a shop worker who, under a contract of employment, is or may be required to do shop work on Sundays.
- (2) The employer must give to the shop worker a written statement informing the shop worker of the following rights—
 - (a) the right to object to working on Sundays by giving the employer an opting-out notice (if section 40 applies to the shop worker);
 - (b) the right to object to doing shop work for additional hours on Sundays by giving the employer an objection notice.
- (3) The statement must be given before the end of the period of two months beginning with the day on which the person becomes a shop worker as mentioned in subsection (1).
- (4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).
- (5) A statement under this section must comply with such requirements as to form and content as regulations may provide.

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(6) Regulations under this section may make different provision for different purposes.

Textual Amendments

F2 Ss. 41A-41D inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), [Sch. 5 para. 3](#)

41C Explanatory statement: shop workers at commencement date

- (1) This section applies where—
 - (a) under a contract of employment a shop worker is or may be required to do shop work on Sundays, and
 - (b) the shop worker was employed under that contract on the day before the commencement date.
- (2) The shop worker's employer must give to the shop worker a written statement informing the shop worker of the rights mentioned in section 41B(2).
- (3) The statement must be given before the end of the period of two months beginning with the commencement date.
- (4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).
- (5) A statement under this section must comply with such requirements as to form and content as regulations may provide.
- (6) Regulations under this section may make different provision for different purposes.
- (7) In this section “commencement date” means the date appointed by regulations under section 44 of the Enterprise Act 2016 for the coming into force of section 33 of, and Schedule 5 to, that Act.

Textual Amendments

F2 Ss. 41A-41D inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), [Sch. 5 para. 3](#)

41D Failure to give explanatory statement under section 41B or 41C

- (1) This section applies if an employer fails to give to a shop worker a written statement in accordance with—
 - (a) section 41B(2) and (3), or
 - (b) section 41C(2) and (3).
- (2) If the shop worker gives to the employer an opting-out notice, the notice period under section 41(3) that applies in relation to the shop worker is varied as follows—
 - (a) if the notice period under that provision would have been one month, it becomes 7 days instead;

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- (b) if the notice period under that provision would have been three months, it becomes one month instead.
- (3) If the shop worker gives to the employer an objection notice, the relevant period under section 43ZA(2) that applies in relation to the shop worker is varied as follows—
 - (a) if the relevant period under that provision would have been one month, it becomes 7 days instead;
 - (b) if the relevant period under that provision would have been three months, it becomes one month instead.]

Textual Amendments

F2 Ss. 41A-41D inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), [Sch. 5 para. 3](#)

42 Explanatory statement [^{F3}: betting workers].

- (1) Where a person becomes a ^{F4}... 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 ^{F5}... betting worker, and
 - (b) the ^{F6}... betting worker, on giving the employer an opting-out notice, becomes ^{F7}... an opted-out betting worker,section 41(3) has effect in relation to the ^{F8}... 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 ^{F9}... betting worker has given him an opting-out notice.
- ^{F10}(4)
- (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—

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—

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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 ^{F11}employment 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 ^{F12}form] set out in ^{F13}subsection (5)].

Extent Information

- E3** S. 42, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by [Sunday Working \(Scotland\) Act 2003 \(c. 18\), ss. 1\(5\), 3; S.I. 2004/958, art. 2](#)

Textual Amendments

- F3** Words in s. 42 heading inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(2\)](#)
- F4** Words in s. 42(1) omitted (4.5.2016 for specified purposes) by virtue of [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(3\)](#)
- F5** Words in s. 42(2)(a) omitted (4.5.2016 for specified purposes) by virtue of [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(4\)\(a\)](#)
- F6** Words in s. 42(2)(b) omitted (4.5.2016 for specified purposes) by virtue of [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(4\)\(b\)\(i\)](#)
- F7** Words in s. 42(2)(b) omitted (4.5.2016 for specified purposes) by virtue of [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(4\)\(b\)\(ii\)](#)
- F8** Words in s. 42(2) omitted (4.5.2016 for specified purposes) by virtue of [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(4\)\(c\)](#)
- F9** Words in s. 42(3) omitted (4.5.2016 for specified purposes) by virtue of [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(5\)](#)
- F10** S. 42(4) omitted (4.5.2016 for specified purposes) by virtue of [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(6\)](#)
- F11** Words in s. 42(4)(5) substituted (1.8.1998) by [1998 c. 8, s. 1\(2\)\(a\)](#) (with s. 16(2)); S.I. 1998/1658, art. 2(1), [Sch. 1](#)
- F12** Word in s. 42(6) substituted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(7\)\(a\)](#)
- F13** Words in s. 42(6) substituted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 4\(7\)\(b\)](#)

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Modifications etc. (not altering text)

- C3** S. 42(2) modified (E.W.) (1.5.2012) by [Sunday Trading \(London Olympic Games and Paralympic Games\) Act 2012 \(c. 12\), ss. 2\(2\), 3\(1\)](#)

43 Contractual requirements relating to Sunday work [^{F14}: opting-out notices].

- (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.

^{F15}(4)

- (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, ^{F16}

^{F15}(b)

Extent Information

- E4** S. 43, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by [Sunday Working \(Scotland\) Act 2003 \(c. 18\), ss. 1\(5\), 3; S.I. 2004/958, art. 2](#)

Textual Amendments

- F14** Words in s. 43 heading inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\), s. 44\(1\)\(d\), Sch. 5 para. 5](#)
- F15** S. 43(4)(5)(b) repealed (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 7(a)(c), [Sch. 9\(2\)](#); S.I. 1999/2830, [art. 2\(1\)\(3\), Sch. 1 Pt. II, Sch. 2 Pt. II](#) (with Sch. 3 paras. 10, 11)
- F16** Word “and” after s. 43(5)(a) repealed (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 7(b), [Sch. 9\(2\)](#); S.I. 1999/2830, [art. 2\(1\)\(3\), Sch. 1 Pt. II, Sch. 2 Pt. II](#) (with Sch. 3 paras. 10, 11)

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[^{F17}43ZA Contractual requirements relating to working additional hours on Sundays: objection notices

- (1) Where a shop worker gives to his or her employer an objection notice, any agreement entered into between the shop worker and the employer becomes unenforceable to the extent that—
- (a) it requires the shop worker to do shop work for additional hours on Sunday after the end of the relevant period, or
 - (b) it requires the employer to provide the shop worker with shop work for additional hours on Sunday after the end of that period.
- (2) The “relevant period” is—
- (a) in the case of a shop worker who is or may be required to do shop work in or about a large shop, the period of one month beginning with the day on which the objection notice is given;
 - (b) in any other case, the period of three months beginning with that day.

This subsection is subject to section 41D(3).

- (3) A shop worker who has given an objection notice may revoke the notice by giving a further written notice to the employer.
- (4) Where—
- (a) a shop worker gives to the employer a notice under subsection (3), and
 - (b) after giving the notice the shop worker expressly agrees with the employer to do shop work for additional hours on Sunday (whether on Sundays generally or on a particular Sunday),
- the contract of employment between the shop worker and the employer is to be taken to be varied to the extent necessary to give effect to the terms of the agreement.
- (5) The reference in subsection (1) to any agreement—
- (a) includes the contract of employment under which the shop worker is employed immediately before giving the objection notice;
 - (b) includes an agreement of a kind mentioned in subsection (4), or a contract of employment as taken to be varied under that subsection, only if an objection notice is given in relation to the working of additional hours under that agreement or contract as varied.

Textual Amendments

F17 Ss. 43ZA, 43ZB inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), [Sch. 5 para. 6](#)

43ZB Interpretation

- (1) In this Part—
- “additional hours” has the meaning given in section 41A(2);
 - “large shop” means a shop which has a relevant floor area exceeding 280 square metres;
 - “objection notice” has the meaning given in section 41A(2);
 - “regulations” means regulations made by the Secretary of State.

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- (2) In the definition of “large shop” in subsection (1)—
- (a) “shop” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods;
 - (b) “relevant floor area” means the internal floor area of so much of the large shop in question as consists of or is comprised in a building.
- (3) For the purposes of subsection (2), any part of the shop which is not used for the serving of customers in connection with the sale or display of goods is to be disregarded.
- (4) The references in subsections (2) and (3) to the sale of goods does not include—
- (a) the sale of meals, refreshments or alcohol (within the meaning of the Licensing Act 2003 or, in relation to Scotland, the Licensing (Scotland) Act 2005 (asp 16)) for consumption on the premises on which they are sold, or
 - (b) the sale of meals or refreshments prepared to order for immediate consumption off those premises.]

Textual Amendments

F17 Ss. 43ZA, 43ZB inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), [Sch. 5 para. 6](#)

Status:

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