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STATUTORY INSTRUMENTS

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**1998 No. 1833**

**The Working Time Regulations 1998**

**PART V**

**SPECIAL CLASSES OF PERSON**

**Agency workers not otherwise “workers”**

**36.**—(1) This regulation applies in any case where an individual (“the agency worker”)—

- (a) is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangements made between the agent and the principal; but
- (b) is not, as respects that work, a worker, because of the absence of a worker’s contract between the individual and the agent or the principal; and
- (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.

(2) In a case where this regulation applies, the other provisions of these Regulations shall have effect as if there were a worker’s contract for the doing of the work by the agency worker made between the agency worker and—

- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work; or
- (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work,

and as if that person were the agency worker’s employer.

**Crown employment**

**37.**—(1) Subject to paragraph (4) and regulation 38, these Regulations have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other workers.

(2) In paragraph (1) “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision.

(3) For the purposes of the application of the provisions of these Regulations in relation to Crown employment in accordance with paragraph (1)—

- (a) references to a worker shall be construed as references to a person in Crown employment; and
- (b) references to a worker’s contract shall be construed as references to the terms of employment of a person in Crown employment.

(4) No act or omission by the Crown which is an offence under regulation 29 shall make the Crown criminally liable, but the High Court or, in Scotland, the Court of Session may, on the

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application of a person appearing to the Court to have an interest, declare any such act or omission unlawful.

### Armed forces

**38.**—(1) Regulation 37 applies—

- (a) subject to paragraph (2), to service as a member of the armed forces, and
- (b) to employment by an association established for the purposes of Part XI of the Reserve Forces Act 1996<sup>M1</sup>.

(2) No complaint concerning the service of any person as a member of the armed forces may be presented to an employment tribunal under regulation 30 unless—

- (a) that person has made a complaint in respect of the same matter to an officer under the service redress procedures, and
- (b) that complaint has not been withdrawn.

(3) For the purposes of paragraph (2)(b), a person shall be treated as having withdrawn his complaint if, having made a complaint to an officer under the service redress procedures, he fails to submit the complaint to the Defence Council under those procedures.

(4) Where a complaint of the kind referred to in paragraph (2) is presented to an employment tribunal, the service redress procedures may continue after the complaint is presented.

(5) In this regulation, “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955<sup>M2</sup>, section 180 of the Air Force Act 1955<sup>M3</sup> and section 130 of the Naval Discipline Act 1957<sup>M4M5</sup>.

#### Marginal Citations

**M1** 1996 c.14.

**M2** 1955 c.18.

**M3** 1955 c.19.

**M4** 1957 c.53.

**M5** Each of the sections referred to in paragraph (5) was substituted by section 20 of the [Armed Forces Act 1996](#) (c.46).

### House of Lords staff

**39.**—(1) These Regulations have effect in relation to employment as a relevant member of the House of Lords staff as they have effect in relation to other employment.

(2) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Lords staff from presenting a complaint to an employment tribunal under regulation 30.

(3) In this regulation “relevant member of the House of Lords staff” means any person who is employed under a worker’s contract with the Corporate Officer of the House of Lords.

### House of Commons staff

**40.**—(1) These Regulations have effect in relation to employment as a relevant member of the House of Commons staff as they have effect in relation to other employment.

(2) For the purposes of the application of the provisions of these Regulations in relation to a relevant member of the House of Commons staff—

- (a) references to a worker shall be construed as references to a relevant member of the House of Commons staff; and
  - (b) references to a worker's contract shall be construed as references to the terms of employment of a relevant member of the House of Commons staff.
- (3) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Commons staff from presenting a complaint to an employment tribunal under regulation 30.
- (4) In this regulation "relevant member of the House of Commons staff" means any person—
- (a) who was appointed by the House of Commons Commission; or
  - (b) who is a member of the Speaker's personal staff.

### Police service

**41.**—(1) [<sup>F1</sup>Subject to paragraph (1A),] for the purposes of these Regulations, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as a police cadet shall be treated as employment, under a worker's contract, by the relevant officer.

[<sup>F2</sup>(1A) For the purposes of these Regulations, any constable who has been seconded to the Serious Organised Crime Agency to serve as a member of its staff shall be treated as employed by the Serious Organised Crime Agency.]

(2) Any matter relating to the employment of a worker which may be provided for for the purposes of these Regulations in a workforce agreement may be provided for for the same purposes in relation to the service of a person holding the office of constable or an appointment as a police cadet by an agreement between the relevant officer and [<sup>F3</sup>a branch board or a joint branch board (as the case may be)].

(3) In this regulation—

[<sup>F4</sup>"a branch board" means a branch board constituted in accordance with regulation 10 of the Police Federation (England and Wales) Regulations 2017,]

"a joint branch board" means a joint branch board constituted in accordance with <sup>F5</sup>...regulation 7(3) of the Police Federation (Scotland) Regulations 1985 <sup>M6</sup>, and

"the relevant officer" means—

- (a) in relation to a member of a police force or a special constable or police cadet appointed for a police area, the chief officer of police (or, in Scotland, the chief constable);
- (b) <sup>F6</sup>...
- (c) in relation to any other person holding the office of constable or an appointment as a police cadet, the person who has the direction and control of the body of constables or cadets in question.

[<sup>F7</sup>(4) For the purposes of these Regulations the relevant officer, as defined by paragraph (3), shall be treated as a corporation sole.

(5) Where, in a case in which the relevant officer, as so defined, is guilty of an offence under these Regulations, it is proved—

- (a) that the office-holder personally consented to the commission of the offence;
- (b) that he personally connived in its commission; or
- (c) that the commission of the offence was attributable to personal neglect on his part,

the office-holder (as well as the corporation sole) shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

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(6) In paragraph (5) above “the office-holder”, in relation to the relevant officer, means an individual who, at the time of the consent, connivance or neglect—

- (a) held the office or other position mentioned in paragraph (3) above as the office or position of that officer; or
- (b) was for the time being responsible for exercising and performing the powers and duties of that office or position.

(7) In the application of this regulation to Scotland—

- (a) paragraph (4) shall have effect as if for the words “corporation sole” there were substituted “distinct juristic person (that is to say, as a juristic person distinct from the individual who for the time being is the office-holder)”;
- (b) paragraph (5) shall have effect as if for the words “corporation sole” there were substituted “juristic person”; and
- (c) paragraph (6) shall have effect as if for the words “paragraph (5)” there were substituted “paragraphs (4) and (5).”]

#### Textual Amendments

- F1** Words in reg. 41(1) inserted (1.4.2006) by [The Serious Organised Crime and Police Act 2005 \(Consequential and Supplementary Amendments to Secondary Legislation\) Order 2006 \(S.I. 2006/594\)](#), art. 1, **Sch. para. 16(2)**
- F2** Reg. 41(1A) inserted (1.4.2006) by [The Serious Organised Crime and Police Act 2005 \(Consequential and Supplementary Amendments to Secondary Legislation\) Order 2006 \(S.I. 2006/594\)](#), art. 1, **Sch. para. 16(3)**
- F3** Words in reg. 41(2) substituted (E.W.) (31.12.2017) by [The Police Federation \(England and Wales\) Regulations 2017 \(S.I. 2017/1140\)](#), reg. 1(1), **Sch. 1 para. 2(2)(a)** (with Sch. 3)
- F4** Words in reg. 41(3) inserted (E.W.) (31.12.2017) by [The Police Federation \(England and Wales\) Regulations 2017 \(S.I. 2017/1140\)](#), reg. 1(1), **Sch. 1 para. 2(2)(b)(i)** (with Sch. 3)
- F5** Words in reg. 41(3) omitted (E.W.) (31.12.2017) by virtue of [The Police Federation \(England and Wales\) Regulations 2017 \(S.I. 2017/1140\)](#), reg. 1(1), **Sch. 1 para. 2(2)(b)(ii)** (with Sch. 3)
- F6** Words in reg. 41(3) revoked (1.4.2006) by [The Serious Organised Crime and Police Act 2005 \(Consequential and Supplementary Amendments to Secondary Legislation\) Order 2006 \(S.I. 2006/594\)](#), art. 1, **Sch. para. 16(4)**
- F7** Reg. 41(4)-(7) inserted (1.9.2005) by [The Working Time Regulations 1998 \(Amendment\) Order 2005 \(S.I. 2005/2241\)](#), arts. 1(1), **2(2)** (with art. 3)

#### Marginal Citations

- M6** [S.I. 1985/1531](#), to which there are amendments not relevant to these Regulations.

#### Non-employed trainees

**42.** For the purposes of these Regulations, a person receiving relevant training, otherwise than under a contract of employment, shall be regarded as a worker, and the person whose undertaking is providing the training shall be regarded as his employer.

#### [<sup>F8</sup>Workers employed in agriculture in Wales or Scotland]

**43.** The provisions of Schedule 2 have effect in relation to workers employed in agriculture [<sup>F9</sup>in Wales or Scotland].

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### Textual Amendments

- F8** Reg. 43 heading substituted (E.) (1.10.2013) by [The Working Time \(Amendment\) \(England\) Regulations 2013 \(S.I. 2013/2228\)](#), regs. 1(2), **2(4)(a)** (with reg. 3)
- F9** Words in reg. 43 inserted (E.) (1.10.2013) by [The Working Time \(Amendment\) \(England\) Regulations 2013 \(S.I. 2013/2228\)](#), regs. 1(2), **2(4)(b)** (with reg. 3)

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