



Statutory Document No. 104/07

THE EMPLOYMENT ACT 2006

**THE PART-TIME WORKERS (PREVENTION OF LESS FAVOURABLE  
TREATMENT) REGULATIONS 2007**

*Approved by Tynwald*

*21<sup>st</sup> March 2007*

*Coming into operation*

*30<sup>th</sup> September 2007*

In exercise of the powers conferred on the Department of Trade and Industry by section 165 of the Employment Act 2006<sup>1</sup>, and of all other enabling powers, the following Regulations are hereby made:—

*General*

**1. Citation, commencement and interpretation**

(1) These Regulations may be cited as the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 30th September 2007.

(2) In these Regulations —

"the Act" means the Employment Act 2006;

"agency worker" means an individual who —

- (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 (as defined in section 173(1) of the Act), 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;

"worker" means —

- (a) a worker (as defined in section 173(1) of the Act), or
- (b) an agency worker.

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<sup>1</sup> 2006 c.21  
Price £1.65

(3) For the purpose of these Regulations "the pro rata principle" is the principle that, where a comparable full-time worker receives or is entitled to receive pay or any other benefit, a part-time worker is to receive or be entitled to receive not less than the proportion of that pay or other benefit that the number of his weekly hours bears to the number of weekly hours of the comparable full-time worker.

(4) In paragraph (3) and regulations 4 and 5 "weekly hours" means the number of hours a worker is required to work under his contract of employment in a week in which he has no absences from work and does not work any overtime or, where the number of such hours varies according to a cycle, the average number of such hours.

(5) 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 contract of employment, by the Chief Constable.

## **2. Meaning of "full-time worker", "part-time worker" and "comparable full-time worker"**

(1) A worker is a full-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the employer under the same type of contract, is identifiable as a full-time worker.

(2) A worker is a part-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is not identifiable as a full-time worker.

(3) A full-time worker is a comparable full-time worker in relation to a part-time worker if, at the time when the treatment that is alleged to be less favourable to the part-time worker takes place —

(a) both workers are —

(i) employed by the same employer under the same type of contract, and

(ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience; and

(b) the full-time worker works or is based at the same establishment as the part-time worker or, where there is no full-time worker working or based at that establishment who satisfies the requirements of subparagraph (a), works or is based at a different establishment and satisfies those requirements.

(4) For the purposes of paragraphs (1), (2) and (3), the following shall be regarded as being employed under different types of contract —

(a) employees employed under a contract that is neither for a limited term nor a contract of apprenticeship;

- (b) employees employed under a contract for a limited term that is not a contract of apprenticeship;
- (c) employees employed under a contract of apprenticeship;
- (d) workers who are neither employees nor employed under a contract for a limited term;
- (e) workers who are not employees but are employed under a contract for a limited term;
- (f) any other description of worker that it is reasonable for the employer to treat differently from other workers on the ground that workers of that description have a different type of contract.

### **3. Liability of employers and principals**

(1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as also done by his employer, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for the employer with the authority of the employer shall be treated for the purposes of these Regulations as also done by the employer.

(3) In proceedings under these Regulations against any person in respect of an act alleged to have been done by a worker of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the worker —

- (a) doing that act; or
- (b) doing, in the course of his employment, acts of that description.

### *Application of Regulations*

### **4. Workers becoming part-time**

(1) This regulation applies to a worker who —

- (a) was identifiable as a full-time worker in accordance with regulation 2(1); and
- (b) following a termination or variation of his contract, continues to work under a new or varied contract, whether of the same type or not, that requires him to work for a number of weekly hours that is lower than the number he was required to work immediately before the termination or variation.

(2) Notwithstanding regulation 2(3), regulation 7 shall apply to a worker to whom this regulation applies as if he were a part-time worker and as if there were a comparable full-time worker employed under the terms which applied to him immediately before the variation or termination.

(3) The fact that this regulation applies to a worker does not affect any right he may have under these Regulations by virtue of regulation 2(3).

**5. Workers returning part-time after absence**

- (1) This regulation applies to a worker who —
- (a) was identifiable as a full-time worker in accordance with regulation 2(1) immediately before a period of absence (whether the absence followed a termination of the worker's contract or not);
  - (b) returns to work for the same employer within a period of less than 12 months beginning with the day on which the period of absence started;
  - (c) returns to the same job or to a job at the same level under a contract, whether it is a different contract or a varied contract and regardless of whether it is of the same type, under which he is required to work for a number of weekly hours that is lower than the number he was required to work immediately before the period of absence.

(2) Notwithstanding regulation 2(3), regulation 7 shall apply to a worker to whom this regulation applies ("the returning worker") as if he were a part-time worker and as if there were a comparable full-time worker employed under -

- (a) the contract under which the returning worker was employed immediately before the period of absence; or
- (b) where it is shown that, had the returning worker continued to work under the contract mentioned in sub-paragraph (a), a variation would have been made to its term during the period of absence, the contract mentioned in that sub-paragraph including that variation.

(3) The fact that this regulation applies to a worker does not affect any right he may have under these Regulations by virtue of regulation 2(3).

**6. Exclusions**

(1) These Regulations do not apply to service as a member of any of the naval, military and air forces of the Crown.

(2) These Regulations do not apply to any individual in his capacity as the holder of a judicial office if he is remunerated on a daily fee-paid basis.

*Rights of part-time workers*

**7. Less favourable treatment of part-time workers**

(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker —

- (a) as regards the terms of his contract; or
- (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) The right conferred by paragraph (1) applies only if —

- (a) the treatment is on the ground that the worker is a part-time worker, and
- (b) the treatment is not justified on objective grounds.

(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.

(4) A part-time worker paid at a lower rate for overtime worked by him in a period than a comparable full-time worker is or would be paid for overtime worked by him in the same period shall not, for that reason, be regarded as treated less favourably than the comparable full-time worker where, or to the extent that, the total number of hours worked by the part-time worker in the period, including overtime, does not exceed the number of hours the comparable full-time worker is required to work in the period, disregarding absences from work and overtime.

#### **8. Right to receive written statement of reasons for less favourable treatment**

(1) If a worker who considers that his employer may have treated him in a manner which infringes a right conferred on him by regulation 7 requests in writing from his employer a written statement giving particulars of the reasons for the treatment, the worker is entitled to be provided with such a statement within 21 days of his request.

(2) A written statement under this regulation is admissible as evidence in any proceedings under these Regulations.

(3) If it appears to the Tribunal in any proceedings under these Regulations —

(a) that the employer deliberately, and without reasonable excuse, omitted to provide a written statement, or

(b) that the written statement is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that the employer has infringed the right in question.

(4) This regulation does not apply where the treatment in question consists of the dismissal of an employee, and the employee is entitled to a written statement of reasons for his dismissal under section 110 of the Act.

#### **9. Unfair dismissal and right not to be subjected to detriment**

(1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part X of the Act if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) 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 a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are —

(a) that the worker has —

(i) brought proceedings against the employer under these Regulations;

(ii) requested from his employer a written statement of reasons under regulation 8;

- (iii) given evidence or information in connection with such proceedings brought by any worker;
  - (iv) otherwise done anything under these Regulations in relation to the employer or any other person;
  - (v) alleged that the employer had infringed these Regulations; or
  - (vi) refused (or proposed to refuse) to forgo a right conferred on him by these Regulations, or
- (b) that the employer believes or suspects that the worker has done or intends to do any of the things mentioned in sub-paragraph (a).

(4) Where the reason or principal reason for dismissal or, as the case may be, ground for subjection to any act or deliberate failure to act, is that mentioned in paragraph (3)(a)(v), or paragraph (3)(b) so far as it relates thereto, neither paragraph (1) nor paragraph (2) applies if the allegation made by the worker is false and not made in good faith.

(5) Paragraph (2) does not apply where the detriment in question amounts to the dismissal of an employee within the meaning of Part X of the Act.

### *Remedies*

#### **10. Complaint to Tribunal**

(1) Subject to regulation 9(5), a worker may present a complaint to the Tribunal that his employer has infringed a right conferred on him by regulation 7 or 9(2).

(2) Subject to paragraph (3), the Tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of 3 months beginning with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them.

(3) The Tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of calculating the date of the less favourable treatment or detriment under paragraph (2) —

- (a) where a term in a contract is less favourable, that treatment shall be treated, subject to sub-paragraph (b), as taking place on each day of the period during which the term is less favourable;
- (b) where an application relies on regulation 4 or 5, the less favourable treatment shall be treated as occurring on, and only on, in the case of regulation 4, the first day on which the applicant worked under the new or varied contract and, in the case of regulation 5, the day on which the applicant returned; and
- (c) a deliberate failure to act contrary to regulation 7 or 9(2) shall be treated as done when it was decided on.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of paragraph (4)(c) to decide not to act —

- (a) when he does an act inconsistent with doing the failed act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to have done the failed act if it was to be done.

(6) Where a worker presents a complaint under this regulation it is for the employer to identify the ground for the less favourable treatment or detriment.

(7) Where the Tribunal finds that a complaint presented to it under this regulation is well founded, it shall take such of the following steps as it considers just and equitable —

- (a) making a declaration as to the rights of the complainant and the employer in relation to the matters to which the complaint relates;
- (b) ordering the employer to pay compensation to the complainant;
- (c) recommending that the employer take, within a specified period, action appearing to the Tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.

(8) If the employer fails, without reasonable justification, to comply with a recommendation made by the Tribunal under paragraph (7)(c), the Tribunal may, if it thinks it just and equitable to do so —

- (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under paragraph (7)(b); or
- (b) make an order under paragraph (7)(b).

## **11. Compensation**

(1) Where the Tribunal orders compensation under regulation 10(7)(b), the amount of the compensation awarded shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —

- (a) the infringement to which the complaint relates, and
- (b) any loss which is attributable to the infringement having regard, in the case of an infringement of the right conferred by regulation 7, to the pro rata principle except where it is inappropriate to do so.

(2) The loss shall be taken to include —

- (a) any expenses reasonably incurred by the complainant in consequence of the infringement, and
- (b) loss of any benefit which he might reasonably be expected to have had but for the infringement.

(3) In ascertaining the loss the Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law.

(4) Where the Tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the

complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

*Amendments of the Act*

**12. Amendments**

- (1) The Act is amended as follows.
- (2) In section 128—
  - (a) in subsection (1)(b) (redundancy as unfair dismissal), for "(14)" substitute "(15)";
  - (b) at the end insert —

"(15) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 9 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 (unless the case is one to which paragraph (4) of that regulation applies)."
- (3) In section 132(2) (unfair dismissal: no qualifying period) —
  - (a) in paragraph (n), omit "and";
  - (b) at the end insert "and
  - (p) regulation 9(1) of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007."

MADE

20 / 2 / 2007

*Secretary MTH*  
Minister for Trade and Industry

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations, made under section 165 of the Employment Act 2006, make provision for securing that persons in part-time employment are treated no less favourably than persons in full-time employment.

A part-time worker has the right not to be treated by his employer less favourably than a comparable full-time worker, as regards the term of his contract or by being subjected to any other detriment, because he is a part-time worker, unless the treatment is justified on objective grounds (regulation 7). ("Part-time worker" and "comparable full-time worker" are defined by regulation 2.) Whether a part-time worker is treated less favourably is to be determined by applying the "pro rata principle" (see regulation 1(3)). Special provisions apply to workers who go from full-time to part-time work, or go on part-time work after an absence from full-time work (regulations 4 and 5).

A worker has the right not to suffer detriment for seeking to enforce the above right, assisting another worker to do so, or alleging that the employer has infringed that right (regulation 9). This does not cover dismissal of an employee, but dismissal for any of those reasons is automatically unfair for the purposes of Part X of the Act (regulations 9 and 12).

The above rights may be enforced by complaint to the Employment Tribunal within 3 months of the treatment or detriment (or the last of them), but the Tribunal can allow a complaint out of time if there was a good reason for the delay (regulation 10). Where the claim is successful the Tribunal makes a declaration, and may award compensation of an amount which the Tribunal considers just and equitable having regard to the employer's infringement and the worker's loss. It may also make a recommendation as to action to be taken by the employer to remove or reduce the adverse effect on the claimant; if the employer fails to comply with the recommendation it may make or increase an award of compensation.

