



STATUTORY INSTRUMENTS.

S.I. No. 686 of 2022



EUROPEAN UNION (TRANSPARENT AND PREDICTABLE WORKING
CONDITIONS) REGULATIONS 2022

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I, LEO VARADKAR, Minister for Enterprise Trade and Employment in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving full effect to Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019¹ on transparent and predictable working conditions in the European Union, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Transparent and Predictable Working Conditions) Regulations 2022.

Definition

2. In these Regulations, “Act of 1994” means the Terms of Employment (Information) Act 1994 (No. 5 of 1994).

Amendment of section 1 of Act of 1994

3. Section 1 of the Act of 1994 is amended -

(a) in subsection (1) -

(i) by the substitution of the following definition for the definition of “contract of employment”:

“ ‘contract of employment’ means -

(a) a contract of service or apprenticeship, or

(b) any other contract whereby -

(i) an individual agrees with another person personally to execute any work or service for that person, or

(ii) an individual agrees with a person carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 to do or perform personally any work or service for

¹ OJ No. L 186, 11.7.2019, p. 105.

another person
 (whether or not the
 other person is a party
 to the contract),
 whether the contract is
 express or implied and,
 if express, whether oral
 or written;”, and

(ii) by the insertion of the following definitions:

“ ‘seafarer’ has the same meaning as it has in the Agreement concluded by the European Community Shipowners’ Associations (ECSA) and the European Transport Workers’ Federation (ETF) on the Maritime Labour Convention, 2006, implemented by Council Directive 2009/13/EC of 16 February 2009²;

‘ sea fisherman’ has the same meaning that ‘fisherman’ has in the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers’ Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche) implemented by Council Directive (EU) 2017/159 of 19 December 2016³;”, and

(b) by the insertion of the following subsection after subsection (2):

“(2A) A word or expression that is used in section 2, 3, 3A, 4, 5, 5A or 6D to 6I that is also used in Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019⁴ on transparent and predictable working conditions in the European Union has, unless the contrary intention appears, the same meaning in those sections that it has in that Directive.”.

Amendment of section 2 of Act of 1994

4. Section 2 of the Act of 1994 is amended -

(a) in subsection (1), by the substitution of “4 consecutive weeks” for “1 month”,

² OJ No. L 124, 20.5.2009, p. 30.

³ OJ No. L 25, 31.1.2017, p. 12.

⁴ OJ No. L 186, 11.7.2019, p. 105.

- (b) in subsection (3), by the substitution of the following paragraph for paragraph (a):
 - “(a) subject to subsection (3A), the reference to 21 hours shall be construed as a reference to 3 hours,”
- (c) by the insertion of the following subsection after subsection (3):
 - “(3A) For the purposes of paragraph (a) of subsection (3), time worked with all employers forming or belonging to the same enterprise, group or entity shall count towards the period of 3 hours referenced in that paragraph.”, and
- (d) by the insertion of the following subsection after subsection (4):
 - “(5) Subsection (1) shall not apply to employment where no guaranteed amount of work that is remunerated is predetermined before the employment starts.”.

Amendment of section 3 of Act of 1994

5. Section 3 of the Act of 1994 is amended -

- (a) in subsection (1) -
 - (i) by the substitution of “one month” for “2 months”,
 - (ii) by the deletion of paragraphs (c), (d), (e) and (i),
 - (iii) in paragraph (m), by the substitution of “were made,” for “were made.”, and
 - (iv) by the insertion of the following paragraphs after paragraph (m):
 - “(n) the training entitlement, if any, provided by the employer,
 - (o) in the case of a temporary contract of employment, the identity of the user undertakings (within the meaning of Directive 2008/104/EC of the European Parliament and of the Council of 19

November 2008⁵ on temporary agency work), when and as soon as known, and

- (p) if the work pattern of an employee is entirely or mostly unpredictable, the statement shall inform the employee of -
 - (i) the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours,
 - (ii) the reference hours and days within which the employee may be required to work, and
 - (iii) the minimum notice period to which the employee is entitled to before the start of a work assignment and, where applicable, the deadline for notification in accordance with section 17 of the Organisation of Working Time Act 1997, and
- (q) where it is the responsibility of the employer, the identity of the social security institutions receiving the social insurance

⁵ OJ No. L 327, 5.12.2008 p. 9.

contributions attached to the contract of employment and any protection relating to social security provided by the employer.”,

and

(b) in subsection (1A) -

(i) by the substitution of the following paragraph for paragraph (d):

“(d) the remuneration, including the initial basic amount, any other component elements, if applicable, indicated separately, the frequency and method of payment of the remuneration to which the employee is entitled and the pay reference period for the purposes of the National Minimum Wage Act 2000;”,

(ii) in paragraph (f), by the substitution of “are treated,” for “are treated.”, and

(iii) by the insertion of the following paragraphs after paragraph (f):

“(g) the place of work or, where there is no fixed or main place of work, a statement specifying that the employee is employed at various places or is free to determine his or her place of work or to work at various places;

(h) either -

(i) the title, grade, nature or category of work for which the employee is employed, or

(ii) a brief specification or description of the work;

- (i) the date of commencement of the employee's contract of employment;
 - (j) any terms or conditions relating to hours of work (including overtime);
 - (k) where a probationary period applies, its duration and conditions.”,
- (c) in subsection (3), by the substitution of “paragraphs (d), (j) and (k) of subsection (1A) or paragraphs (h), (j), (k), (l), (n) and (q) of subsection (1)” for “paragraph (d) of subsection (1A) or paragraphs (h), (i), (j), (k) and (l) of the said subsection (1)”, and
- (d) by the insertion of the following subsection after subsection (7):
- “(8) Paragraphs (p) and (q) of subsection (1) shall not apply to seafarers or sea fishermen.”.

Form of statement to be provided

6. The Act of 1994 is amended by the insertion of the following section after section 3:

“3A. A statement furnished by an employer under section 3, 4, 5, 6, 6E or 6F shall be -

- (a) signed and dated by or on behalf of the employer,
- (b) in writing, and
- (c) transmitted on paper or, provided that the information is accessible to the employee, that it can be stored and printed, and that the employer retains proof of transmission or receipt, in electronic form.”.

Amendment of section 4 of Act of 1994

7. Section 4 of the Act of 1994 is amended -

- (a) in subsection (1), by the substitution of the following paragraph for paragraph (a):
 - “(a) the country or countries in which the work outside the State is to be performed and the anticipated period of employment,”,
- (b) by the insertion of the following subsections after subsection (1):
 - “(1A) Without prejudice to subsection (1), where an employee is a posted worker within the meaning of the European Union (Posting of Workers)

Regulations 2016 (S.I. No. 412 of 2016), there shall be added to the statement specified in subsection (1) the following particulars -

- (a) the remuneration to which the employee is entitled in accordance with the applicable law of the host Member State,
- (b) where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging, and
- (c) the link to the single official national website developed by the host Member State pursuant to Article 5(2) of the Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014⁶ on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

(1B) Subsection (1A) shall not apply to seafarers or sea fishermen.”, and

- (c) in subsection (2), by the insertion of “or paragraph (a) of subsection (1A)” after “subsection (1)”.

Amendment of section 5 of Act of 1994

8. Section 5 of the Act of 1994 is amended, in subsection (1), by the substitution of the following paragraph for paragraph (a):

- “(a) the day on which the change takes effect, or”.

Contracts of employment existing before the commencement of European Union (Transparent and Predictable Working Conditions) Regulations 2022

9. The Act of 1994 is amended by the insertion of the following section after section 5:

⁶ OJ No. L 159, 28.5.2014, p. 11.

“5A. (1) Where, before the commencement of the European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. No. 686 of 2022), an employee has entered into a contract of employment with an employer, then, the employer shall, if so requested by the employee, furnish to the employee a statement containing the particulars specified in -

- (a) subsections (1) and (1A) of section 3, and
- (b) subsections (1) and (1A) of section 4.

(2) Notwithstanding that an employee has not made a request under subsection (1), he or she is entitled to the rights specified in sections 6D to 6H.”.

Amendment of Act of 1994 – insertion of sections 6D to 6I

10. The Act of 1994 is amended by the insertion of the following sections after section 6C:

“Maximum duration of probationary period

6D. (1) Subject to this section, where an employee has entered into a contract of employment with an employer which provides for a probationary period, such period shall not exceed 6 months.

(2) The probationary period of a public servant shall not exceed 12 months.

(3) The probationary period referred to in subsection (1) may, on an exceptional basis, be longer where such longer period -

- (a) does not exceed 12 months, and
- (b) would be in the interest of the employee.

(4) Subject to subsections (3) and (5) where, on the commencement date an employee (other than a public servant) is subject to a probationary period which exceeds 6 months and the employee has completed at least 6 months of his or her probationary period, the probationary period shall expire on the earlier of -

- (a) the date on which the probationary period was due to expire, or
- (b) the 1st day of February 2023.

(5) Where, in accordance with a specified provision, an employee is absent from work during the probationary period, such period shall be extended by the employer for the duration of the employee’s absence.

(6) In this section -

‘commencement date’ means the date on which the European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. No. 686 of 2022) come into operation;

‘public servant’ has the same meaning as it has in Part 2 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012;

‘specified provision’ means:

- (a) section 25(1) of the Maternity Protection Act 1994;
- (b) section 15(6) of the Adoptive Leave Act 1995;
- (c) section 14(3) of the Parental Leave Act 1998;
- (d) section 13(5) of the Carer’s Leave Act 2001;
- (e) section 19(3) of the Paternity Leave and Benefit Act 2016;
- (f) section 18(3) of the Parent’s Leave and Benefit Act 2019;
- (g) section 11(3) of the Sick Leave Act 2022;
- (h) any other statutory provision providing that probation shall -
 - (i) stand suspended during an employee’s absence from work, and
 - (ii) be completed by the employee on his or her return from work after such absence.”.

Parallel employment

6E. (1) Subject to subsections (2), (3) and (4), an employer shall not –

- (a) prohibit an employee from taking up employment with another employer, outside the work schedule established with the first named employer, or
- (b) subject an employee to adverse treatment for taking up employment with another employer, outside the work schedule established with the first named employer.

(2) An employer may restrict an employee from taking up employment with another employer, outside the work schedule established with the first named employer, where such restriction (in this section referred to as an ‘incompatibility restriction’) is proportionate and is based on objective grounds.

(3) Where an employer imposes an incompatibility restriction on an employee –

- (a) details of the incompatibility restriction (including details of the objective grounds on which the incompatibility restriction is based) shall be included in the contract of employment, or
 - (b) the employer shall provide to the employee a statement in writing setting out the incompatibility restriction (including details of the objective grounds on which the incompatibility restriction is based).
- (4) This section shall not apply to seafarers or sea fishermen.
- (5) In this section 'objective grounds' includes the following grounds -
- (a) health and safety,
 - (b) the protection of business confidentiality,
 - (c) the integrity of the public service,
 - (d) the avoidance of conflicts of interests,
 - (e) safeguarding productive and safe working conditions,
 - (f) the protection of safety of patients and people receiving care from the health service,
 - (g) the protection of national security,
 - (h) the protection of critical national infrastructure,
 - (i) the protection of energy security,
 - (j) the administration of vital public service functions,
 - (k) compliance by the employer and the employee with any applicable statutory or regulatory obligations,
 - (l) compliance by the employee with any professional standards for the time being in force, and
 - (m) notwithstanding the generality of paragraphs (a) to (l), 'objective grounds' for the purposes of a contract of employment entered into by the Health Service Executive or a service provider includes the following grounds:
 - (i) the protection of patient health and safety;
 - (ii) the State's objectives of -
 - (I) the promotion of public welfare by improving public health,
 - (II) the removal of inefficiencies and inequalities in the delivery of healthcare services, and
 - (III) assisting in the implementation of a universal healthcare service in which patients are treated on the basis of health needs.
- (6) In this section 'service provider' means -

- (a) a person who enters into an arrangement under section 38 of the Health Act 2004 to provide a health or personal social service on behalf of the Health Service Executive,
- (b) the Mental Health Commission,
- (c) the Irish Blood Transfusion Service, or
- (d) the National Virus Laboratory at University College Dublin.

Transition to another form of employment

6F. (1) Subject to subsection (2), an employee who has been in the continuous service of an employer for not less than 6 months and who has completed his or her probationary period, if any, may request a form of employment with more predictable and secure working conditions where available and receive a reasoned written reply from his or her employer.

(2) An employee may, once in any 12 month period, request a form of employment in accordance with subsection (1).

(3) An employer shall provide the reasoned written reply referred to in subsection (1) to an employee within one month of the request by the employee.

(4) An employer may provide an oral reply where a subsequent similar request is submitted by the same worker where the situation of the worker remains unchanged.

(5) This section shall not apply to seafarers or sea fishermen.

Mandatory training

6G. Where an employer is required by law or by a collective agreement to provide training to an employee to carry out the work for which he or she is employed, such training shall -

- (a) be provided to the employee free of cost,
- (b) count as working time, and
- (c) where possible, take place during working hours.

Collective Agreements

6H. (1) Where a relevant agreement provides for the matters referred to in one or more relevant sections, that section or those sections shall not apply in relation to an employee to whom the relevant agreement for the time being has effect.

(2) In this section -

‘relevant agreement’ means -

- (a) a collective agreement that for the time being stands approved of by the Labour Court, or
 - (b) a registered employment agreement;
- ‘relevant section’ means section 6D, 6E, 6F, or 6G.

Disapplication of certain provisions

- 6I. (1) Sections 6D to 6H shall not apply to -
- (a) a member of the judiciary within the meaning of section 196 of the Taxes Consolidation Act 1997,
 - (b) a retained fire fighter,
 - (c) a person who is in the service of the State as a member of the Permanent Defence Force, or
 - (d) a member of the Garda Síochána.

- (2) In this section -

‘member’, in relation to the Garda Síochána, shall have the same meaning as it has in section 3 of the Garda Síochána Act 2005;

‘retained fire fighter’ means a person commonly referred to as a retained fire fighter and employed by a fire authority (within the meaning of section 2(1) of the Fire Services Act 1981) on a part-time basis and on the basis of payment by the authority to him or her of a retaining fee as well as fees for performing, as required by the authority, any functions of a fire fighter.”.

Amendment of section 7 of Act of 1994

11. Section 7 of the Act of 1994 is amended, in subsection (2) -
- (a) by the substitution of “section 3, 4, 5, 6, 6C, 6D, 6E, 6F or 6G,” for “section 3, 4, 5, 6 or 6C”,
 - (b) in paragraph (b)(i) by the substitution of “section 3, 4, 5, 6, 6C, 6D, 6E, 6F or 6G,” for “section 3, 4, 5, 6 or 6C”, and
 - (c) in paragraph (d), by the substitution of “section 3, 4, 5, 6, 6D, 6E, 6F, or 6G,” for “section 3, 4, 5, 6 or 6C”.

Amendment of Schedule 5 to Workplace Relations Act 2015

12. The Workplace Relations Act 2015 is amended, in Part 1 of Schedule 5, by the substitution of the following paragraph for paragraph 4 -

“4. Section 3, 4, 5, 6, 6C, 6D, 6E, 6F or 6G of the Terms of Employment (Information) Act 1994.”.

Amendment of section 17 of Organisation of Working Time Act 1997

13. Section 17 of the Organisation of Working Time Act 1997 (No. 20 of 1997) is amended -

- (a) in subsection (1), by the substitution of “that week, and the employee’s employer shall ensure the work takes place within predetermined reference hours and days.” for “that week.”,
- (b) by the insertion of the following subsection after subsection (1):

“(1A) When the requirements of subsection (1) are not met by the employee’s employer, an employee shall have the right to refuse to work during the reference hours and days predetermined by the employer in accordance with that subsection without adverse consequences.”, and

- (c) by the insertion of the following subsections after subsection (5):

“(6) In this section -

‘reference hours and days’ has the same meaning as it has in Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019⁷ on transparent and predictable working conditions in the European Union;

‘seafarer’ has the same meaning as it has in the Agreement concluded by the European Community Shipowners’ Associations (ECSA) and the European Transport Workers’ Federation (ETF) on the Maritime Labour Convention, 2006, implemented by Council Directive 2009/13/EC of 16 February 2009⁸;

‘sea fisherman’ has the same meaning that ‘fisherman’ has in the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers’ Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche) implemented by Council Directive (EU) 2017/159 of 19 December 2016⁹.

(7) This section shall not apply to seafarers or sea fishermen.”.

⁷ OJ No. L 186, 11.7.2019, p. 105.

⁸ OJ No. L 124, 20.5.2009, p. 30.

⁹ OJ No. L 25, 31.1.2017, p. 12.

Amendment of Protection of Employees (Fixed-Term Work) Act 2003

14. The Protection of Employees (Fixed-Term Work) Act 2003 is amended by the insertion of the following section after section 9:

“Probation periods

9A. (1) Notwithstanding section 6D of the Terms of Employment (Information) Act 1994, where a fixed-term employee has entered into a fixed-term contract with an employer which provides for a probationary period, the length of such probationary period shall be proportionate to the expected duration of the fixed-term contract and the nature of the work.

(2) Where an employer proposes to renew a fixed-term contract for the same functions and tasks, the fixed-term contract shall not be subject to a new probationary period.

(3) A word or expression that is used in this section that is also used in Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019¹⁰ on transparent and predictable working conditions in the European Union has, unless the contrary intention appears, the same meaning in this section that it has in that Directive.”.



GIVEN under my Official Seal,
16 December, 2022.

LEO VARADKAR,
Minister for Enterprise, Trade and Employment.

¹⁰ OJ No. L 186, 11.7.2019, p. 105.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to transpose into Irish law Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on Transparent and Predictable Working Conditions in the European Union, which replaces Directive 91/533 EEC.

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