

# Part-time

# Work

## New Regulations



Executive Council Statement to the  
2000 Annual Delegate Meeting

# Part-time Work

## Part-time workers in their millions

Part-time workers form a substantial and growing proportion of the UK labour force:

- In 1951, only 800,000 people worked part-time (about 4% of the total workforce).
- By 1981 the numbers had risen to around 4.5 million (over 20% of the total workforce).
- Currently almost six million people work part-time (around 25% of the total workforce).
- And the forecasts are that numbers will continue to rise and approximately one-third of all workers will be in part-time work in the near future.

Certain key sectors of the economy employ a particularly high proportion of part-time workers:

- Retailing is the single largest employer of part-time workers in the private sector.
- In 1985, over 870,000 people worked part-time in retailing (around 43% of the total workforce).
- By 1993 the numbers had risen to almost 1.1 million (around 48% of the total workforce).
- Today, the retail sector employs nearly 1.3 million part-time workers (54% of the total workforce).

Part-time work is now the majority experience in the retail sector, as it is in other key areas of the economy like hotel and catering.

The vast majority of part-time workers are women, though the numbers of men working part-time are also growing:

- Around 83% of all part-time workers are women.
- Nearly half of all women in paid work are in part-time work.
- Around 10% of men likewise work part-time, and that percentage has more than doubled in the last 10 years.
- In 1988 there were just over half a million men in part-time work, but by 1998 over 1.3 million men worked part-time.

Even the term 'part-time' now covers a wide and changing range of working hours arrangements:

- Part-time hours have been steadily shortening with a growing proportion of women in part-time work in retailing, for example, working fewer and fewer hours.
- Part-time work has become increasingly casualised and unstable, with the introduction of zero hours contracts and other poorly regulated forms of flexible working such as agency working.
- A growing number of part-time workers are multiple job holders, with the numbers of part-time workers with a second job increasing by 50% between 1992 and 1996.
- A growing number of people are also working part-time simply because there are no full-time alternatives available. In the last decade there has been a major growth in the numbers of workers involuntarily working part-time.

Part-time work in all its wide and changing variety of forms is therefore an increasingly significant feature of the UK labour market and the dominant form of working in key sectors such as retailing.

## Always an Usdaw issue

Part-time workers form the backbone of some of the largest, most profitable companies in the UK economy.

Our members in part-time work have contributed massively to the profitability and the success of some of the biggest employers in the UK labour market.

As over 80% of all part-time workers are women, those same women have invariably combined paid work and commercial productivity with unpaid work and a whole raft of caring and community responsibilities at the same time.

Our members in part-time work – overwhelmingly women – know very well that part-time workers work differently but just as hard and effectively as anyone else.

Their contribution and presence, alongside that of hundreds of thousands more part-time workers not yet in membership, means that:

- The Union's **recruitment** activity has always encompassed and actively reached out to part-time workers.
- Our day-to-day **representation** work often focuses on the particular experiences and difficulties of part-time workers.
- And our **bargaining** agenda often extends to substantive issues of direct concern to people, often women, in part-time work.

Part-time working isn't just increasing generally, it's also the dominant form of working in key Usdaw spheres of influence like retailing.

More than that, all the independent observers and labour market analysts make clear not only that part-time work is increasingly prevalent in the UK but it is also confidently expected to be the majority experience in large parts of the UK economy as a whole as we head further into the 21st Century.

## Always a positive view in principle

Because of our history and our roots in retailing and the private service sector, the Union has always taken a particular view around part-time working in principle.

Reflecting the views, interests and experiences of our members, we have always believed that part-time working can be a valuable and attractive option for working people according to their own genuine and changing needs over time.

As long as hours packages are freely chosen and only varied by mutual consent, as long as terms and conditions of employment are fair and equal in every respect, and as long as a range and variety of working time arrangements are available to working people as their own needs change, then we have always believed that part-time work can be as valid, as valuable and as rewarding a form of paid work as any other.

## The Union's agenda around part-time work

Our principled views on part-time work have always been firm and clear.

Our members' experience of part-time work, however, has often been at odds with all our aspirations and all our principled views on the potential which part-time work could offer to our people.

For that reason we have always worked hard to bridge the gap between our aspirations in principle and our experience on the ground.

In our industrial work:

- We've actively recruited thousands of part-time workers every year and tried wherever possible to support and resource them as shop stewards and lay representatives.
- We've designed and resourced our structures, through our Women's Committees for example, specifically to address issues of particular concern to part-time workers.

- And we've developed our bargaining, policy and campaigning work to address the experience of part-time workers and to ensure that issues around low pay, rights at work and family-friendly working arrangements, for example, were given high priority by employers and Government alike.

In our political work:

- For the best part of 20 years we campaigned and lobbied hard to oppose the actions of four Tory Governments, all dedicated to demolishing rights at work and exposing vulnerable workers, often in part-time work, to abuse and exploitation.
- At the same time we worked hard with the Labour Party over many years in opposition to develop its minimum standards and Fairness at Work programme.
- With a Labour Government at last in place we've also worked hard to install its Fairness at Work programme for real, promoting its achievements and feeding back in partnership the effects of its policies in practice on the ground.

In all this, we've always stressed that industrial ends call for political means. It's at the heart of our relationship with the Labour Party and our campaigning work over the years. It now drives and characterises our relationship with the Labour Party at last in Government.

It's to the Labour Party's enormous credit and to our own that we've seen our Government deliver on a Fairness at Work programme which so clearly reflects the experience and the needs of so many Usdaw members and people like them:

- A national minimum wage for the first time in our history.
- Regulations on working time which give every working person an absolute right to paid holiday for the first time ever.
- Leave from work for mothers, fathers and carers to spend vital time with their families and dependents.
- And rights to representation and trade union recognition in workplaces to help redress the balance of power between employers and their employees.

All these gains and more have been recorded and applauded at a number of Usdaw events, in Usdaw publications and on a variety of public platforms in recent years.

## Regulating part-time work

It's our industrial experience coupled with our political and campaigning work with the Labour Party which has now delivered yet another set of much needed regulations.

The Government's **Part-Time Employees' Regulations** will come into force in early April 2000.

They represent the Labour Government's attempt to give life to the European Framework Agreement on Part-Time Work, which was negotiated by the European Trades Union Confederation (including our own TUC) and the relevant employers' organisations (including the CBI) and signed in June 1997.

The UK Labour Government was then a signatory to the subsequent Part-Time Work Directive in December 1997.

The Framework Agreement and the Directive were designed to play a vital role in protecting part-time workers effectively from abuse, exploitation and unfair treatment, in placing them on the same pro rata footing as their full-time counterparts and in upgrading the status and attractiveness of part-time work for working people in the UK labour market.

Our Government's regulations must be judged on the extent to which they address and deliver on these vital objectives.

As with all else this Government does around Fairness at Work, its Part-Time Employees' Regulations are put in place not only out of a commitment to justice, fairness and equality.

They are also there to combat cheap labour practices and the dead weight they place on an efficient, competitive economy in the global market place.

And they are there to ensure the taxpayer doesn't continue to foot the bill for exploitative employment practices which leave workers dependent on benefits and the public purse.

Those are the Government's stated objectives and they're threaded throughout its Fairness at Work programme, from the National Minimum Wage through Parental Leave to the Part-Time Employees' Regulations.

We must judge its achievements in large by its own stated objectives.

That is what this document is designed to do. It's set out in the following way:

- **First**, it outlines briefly many part-time workers' general experience of part-time work itself. We need to remind ourselves what we're up against before we pass judgement on Government's best efforts.
- **Second**, it identifies this Union's own principled objectives around part-time work and the interests of part-time workers. We have long and real experience of bargaining, campaigning and lobbying around part-time work and we are well qualified to apply that experience in assessing the value of the new regulations.
- **Third**, in the light of our members' experience and our collective work together, we then examine the Part-Time Employees' Regulations themselves. We need to contrast our own understanding of the realities of part-time work with the regulations as they are framed and as they are likely to work in practice.
- **Finally**, we look at what we now need to do industrially and politically, not only to apply the regulations rigorously but to make good their omissions and inadequacies as we plan and work for a second successive Labour Government.

# Part-time Work – Real Problems

## Part-time work – different and changing needs

People turn to part-time work for a changing variety of different reasons:

- Part-time work is genuinely **preferred** by some people. That should be their absolute right and providing part-time work is genuinely chosen, properly protected and fairly rewarded, then it can be an attractive option for people whose personal circumstances enable them to take it up.
- It can also be a **necessity** for many people, mostly women, who have to combine wage earning with other responsibilities at home and in the wider community. When time has to be divided between earning a wage and other responsibilities, then part-time work can be the only option. With the growth in the number of one parent families, part-time work is increasingly required by men as well as women. There is also a growing number of elderly people in the population and gaps in welfare provision and community facilities mean that people need part-time work to combine wage earning with caring for elderly relatives and dependents.
- Part-time work is sometimes **all that is available**. With the loss of full-time jobs, part-time jobs can be virtually all that are on offer in some communities and local labour markets.

No-one should ever be driven to part-time working for lack of any decent alternative nor against their better judgement. Part-time working should always be a genuine alternative within a range of hours options, all with decent conditions and fair and equal terms and conditions in every respect.

## Part-time work – the reality

Yet the reality for many part-time workers has often been very different.

Part-time working over the years has often meant no choice, no voice and no prospects for the future:

- Many part-time jobs are frequently concentrated in the lowest grades and attract the lowest rates of pay. They often involve unsocial hours shifts with no premium pay. There is no opportunity to supplement low basic rates because bonus and commission schemes have often not applied to part-time working.
- Part-timers are often moved around from job to job by employers who demand sudden changes in hours without any consultation, regardless of the views of the people concerned.
- Part-time jobs rarely involve any serious training and offer very little chance of learning the skills required for higher grades of work or better pay. The Union's study, 'Training Matters' commissioned from Leeds University in the early 1990s made clear, for example, that shopworkers receive very little training and part-time shopworkers receive less still. Part-timers are usually viewed as unskilled, with no status and very little value as members of the workforce. This general lack of concern and investment can mean unhealthy and even dangerous environments with no proper attention to working temperatures, the design of workstations, checkouts, etc.
- Part-time workers may not get rest or refreshment breaks even though they are employed at peak periods and working under real pressure. The resulting stress can mean stress-related illnesses but employers' sick pay schemes may not cover part-time workers.
- Part-timers can be pressured by their employers into working on customary and public holidays when most people are off work. Part-timers are often less well informed about their rights at work than their full-time colleagues and more easily subject to pressure and intimidation.

- Older part-timers, approaching retirement, are less likely to be covered by a company pension scheme and have to rely on the State Pension. Part-time workers with earnings below the Lower Earnings Limit for National Insurance Contributions may not even be entitled to a State Pension either.
- Part-time working often means shift and unsocial hours working with little opportunity to meet colleagues who work at different times or to get involved in trade union activity.
- Part-time working can also have effects on full-time workers. Employers who deliberately structure their workforces to include large numbers of part-timers can create problems with work organisation and workflow for remaining full-time workers, especially those in supervisory grades. Employers who recruit part-timers in large numbers often do so, not because of the demands of the work or the needs of workpeople themselves, but because a range of factors, including the tax and National Insurance systems, make it cheaper for employers in terms of their labour costs.

Over the years, many part-time workers have done their jobs in the knowledge that they are vulnerable to sudden hours changes, pay packet variations, duties and job content changes and the permanent threat of upheaval around their personal and family commitments.

It is the knowledge that these things not only could happen but so often did happen that has made part-time work so often so unstable, unrewarding and demanding for many thousands of part-time workers.

# Part-time Work – An Usdaw Agenda

## The struggle for part-time workers' rights

Part-time workers form an increasingly significant proportion of the Union's membership. From around 55,000 or one in six members in the early 1970s, to almost 100,000 or one in four members in the mid 1980s to over 100,000 or around one in three members currently, the Union has seen a steady and substantial growth in part-time workers in membership.

Their growing presence has ensured that we've developed an increasingly detailed understanding of the experiences, needs and interests of part-time workers and an increasingly well-founded set of principled objectives around part-time work:

- **Full protection and rights at work** with part-time and full-time workers equally covered. We exposed previous Governments' attacks on working people and their attempts to dismantle legislation which protected rights at work. We worked hard to ensure that the Labour Government would create a legal framework which supported stable, secure employment.
- **Decent working conditions and career prospects.** We've always believed that part-time workers should not be excluded from training provision and that they should have real promotion prospects. We needed to ensure that part-time workers had full access to sick pay and pension schemes, maternity leave, unsocial hours payments and bank holiday arrangements.
- **Fair pay and a living wage** with pro rata pay in line with rates for full-time workers. We wanted to ensure that bonus and commission schemes and other payment systems were extended to part-time workers to make sure they benefited fully in the same way as full-time workers.

## An Usdaw Charter on Part-Time Work

We've never stood still and we've always been active around part-time workers' rights. As long ago as 1987 our Annual Delegate Meeting endorsed an Usdaw Charter on Part-Time Work which contained a set of key objectives which are as relevant and important now as they were then:

- Hourly rates of pay equivalent to those paid to full-time workers.
- Extension of bonus and commission schemes to cover part-time workers.
- Positive action on equal pay for work of equal value.
- Full entitlement to a written contract of employment specifying job description, place of work and hours of work.
- Unsocial hours payments for all hours worked outside an agreed standard working day.
- Further payments for call-out and travelling expenses when asked to work over at short notice or work extra shifts.
- Holiday entitlement with holiday pay for part-time workers equivalent to that of full-time workers.
- Equal access for part-time workers to maternity/paternity agreements and family leave responsibility agreements.
- Equal access to sick pay and pension schemes.
- Equal access to training provision for all groups of workers.
- Equal opportunities in promotion and career opportunities.
- Adequate rest and refreshment breaks.



- Effective action on health and safety in the design and maintenance of workstations, checkouts, etc.
- Effective action to combat the hazards and dangers in evening and night shift work.
- Equal access for part-time workers to job security agreements.

Many of the headline issues around this Government's Fairness at Work programme – family-friendly policies, fair and equal pay, holidays and working time and many others – were already well in evidence in our own Charter on Part-Time Work almost 15 years ago.

On the one hand we should applaud the Labour Government and the relationship we continue to have which has delivered so substantially on an Usdaw agenda around part-time work.

On the other, our history and our own real experience mean we should always be confident in our own authority when we speak about the experiences of part-time workers and always be aware of the integrity of our views around part-time work.

Quite simply, we know what we're talking about and it's that authority and integrity we must now bring to bear in good faith on the Government's Part-Time Employees' Regulations.

# Part-time Work – Part-time Employee Regulations

## Righting the wrongs – a golden opportunity

Throughout four punishing periods of Tory Government we invariably looked to Europe, the European Union and the practice of social partnership to help defend and promote our interests as working people in the UK.

Despite intense Tory Government hostility, the European Union helped achieve what little progress we made on basic employment rights and decent treatment at work throughout the 1980s and most of the 1990s.

The election of a Labour Government in May 1997 coincided with a real opportunity in Europe to make progress on part-time workers' rights and on proper and fair regulation

Signing up to the Social Chapter meant work was able to be fully developed on a framework of rights around part-time work with the TUC and the CBI directly involved through their own European networks. The Framework Agreement which emerged reflected the agreed views of both employer and trade union representatives at European level. It was very much a model of social partnership in action. We felt able to move forward on the clear and confident understanding that a progressive UK Labour Government would implement the resultant Part-Time Work Directive enthusiastically in spirit and to the letter in practice.

## An opportunity missed

In some respects the Government has gone some way to making sure the Part-Time Work Directive has at least some of its intended effect.

Its regulations have the effect of ensuring that some part-time workers will be able to combat discrimination directly on the basis of the hours they work, rather than have to pursue more complex sex discrimination arguments.

We take a look at some of those practical gains in the next section.

But in large the Government's Part-Time Employees' Regulations, effective from April 2000, fall a long way short in relation both to the spirit and to the letter of the Part-Time Work Directive.

Our aims and objectives were clear. The Part-Time Work Directive embodied them and to implement them effectively the UK Government's regulations needed to be:

- **Comprehensive.** All our experience tells us that any cheap labour loophole, any opportunity for abuse and exploitation will be ruthlessly exploited by employers and inflicted on large numbers of vulnerable part-time workers. So all part-time workers would need to be included, covered and protected individually, collectively and without exception by the new regulations.
- **Accessible and widely promoted.** We know very well the kind of obstacles which lie in the way of part-time workers, often unorganised and unsupported, trying to get a better deal and understandably feeling isolated. The new regulations would therefore need to be clear, accessible and worker-friendly in every respect.
- **Rigorous and enforceable.** We know it's difficult enough for workers to get to grips with new rights, understand and to have confidence in them in the abstract. It's even more difficult to take action on them, apply them and get results for real. No-one wants to rely on the courts and complicated, expensive legal action. So the new regulations would need to be easy to work with, apply and enforce for both workers and employers alike.

- **Effective and fit for their purpose.** We know from painful experience that any regulation which is in any way flawed in its content or limited in its scope or application, is likely to become discredited and open to evasion and challenge. Quite simply, the new regulations would need to work, be seen to work and have a real and lasting impact.

## Government action seriously lacking

However, far from framing regulations which are comprehensive, accessible, rigorous and fit for their purpose we have to say our Government has seriously missed the point.

The UK Government's Part-Time Employees' Regulations are flawed and unhelpful in a number of vital respects. Far from meeting our aims and objectives as embodied in the Part-Time Work Directive, the regulations in fact are:

- **Highly restrictive.** Government itself estimates that only one in six part-time workers will even be covered by its regulations and only around 45,000 people out of some six million part-time workers will gain in any real sense.

That means that less than 1% of all part-time workers will in any direct way benefit from the new regulations.

- **Misleading and unhelpful.** The regulations fail to mesh with existing sex discrimination and equal pay legislation, creating confusion and a legal maze for workers and employers alike. Government originally committed itself to producing a Code of Practice which would have given detailed and forceful advice in key problem areas. None has been produced.

Workers and employers are left in the dark about what key rights mean in practice and how the regulations are meant to be applied.

- **Selective and incomplete.** Key elements of the Part-Time Work Directive have simply been ignored and passed over. A whole section of the Directive sought to promote opportunities for part-time work, to ensure people had rights to seek to transfer to part-time work if it suited them and to be protected against dismissal for exercising those rights.

Our own Government's regulations simply ignore that key section within the Part-Time Work Directive – a section which would have helped transform the experience of part-time work from a casualised, employer-driven one to a positive, family-friendly option available to all workers.

The Union has already responded critically but constructively to the Government's draft regulations. We are determined to seek improvements and will continue to lobby hard.

At the same time the regulations for real are going to go live in April 2000 and it's vital that we understand what they contain, what they mean, how they might help, how they might not and how to make the best of them in any event. Although we'll continue to try for improvements, the regulations do have a lot to offer and it's important we take every opportunity we have.

# Part-time Work

## – What the Regulations Say

### Getting to grips

The Part-Time Employees' (Prevention of Less Favourable Treatment) Regulations 2000 are themselves quite brief, though they're written in very formal, parliamentary language and not easy for the ordinary reader to understand.

There's nothing unusual in that. Even the best, most worker-friendly legislation can sometimes be so complex even the lawyers take time to understand it, and even then don't always agree about it. The latest Employment Relations Act, for example, contains the longest employment law schedule on record.

For that reason, Government often issues Codes of Practice to help guide people around the law, what it means and how to apply it. Codes of Practice are important and can have legal significance. Several have been produced to help apply the new Employment Relations Act in practice.

In the same way, a Code of Practice was meant to have been issued alongside the Part-Time Employees' Regulations. Government gave that commitment but no Code of Practice has in fact been issued. Instead, Government has attached a series of 'Notes' to the regulations to help guide people as to their meaning and application.

The absence of a Code of Practice is a real problem. In the meantime, all we have are the 'Notes'. Their status is unclear and they've not yet been tested at law. As they stand, what they **don't** say is as important and relevant as what they **do** say.

We take a look at their omissions and silences in the next section. Here, we examine what they do say, covering little more than two sides of paper and addressing seven key issues.

- Rate of pay
- Overtime
- Contractual sick and maternity pay
- Occupational pensions
- Access to training
- Leave/holidays/breaks: annual leave, maternity and parental leave, career breaks
- Redundancy

We look at each issue in turn below and give a brief commentary on the Government's own 'Notes', what they say and what they may mean in practice.

### Rate of pay...what it says

The Government says:

*"The regulations have a direct effect on pay. As a result of the regulations, part-time employees must not receive a lower basic rate of pay than comparable full-time employees.*

*Part-time employees can only be given a lower hourly rate when this is justified on objective grounds. One example where a different hourly rate might be objectively justified would be a performance-related pay scheme. If employees are shown to have a different level of performance measured by a fair and consistent appraisal system this could justifiably result in different rates of pay.*

**To comply with the law:**

- **Part-time employees should receive the same hourly rate as comparable full-time employees."**

## What it means

Taken at face value the Government's view is relatively helpful. Of course a part-time worker should be paid the same rate as anyone else.

But on closer inspection there are several major concerns here:

- The Government uses the term 'employees' throughout the Notes and regulations. Most Usdaw members are employees but many workers (like agency workers, zero hours workers and others) may not technically be employees in the eyes of the law. They would be excluded from the regulations and that's why the Government expects so few part-time workers to be affected. Only part-time employees stand to gain and not part-time workers in general.
- Even as employees, part-time workers may still be in difficulty. Government says they should receive the same hourly rate as comparable full-time employees. But many part-time workers have no comparable full-time employee. Catering, cleaning and shopwork, for example, can often be exclusively part-time with no comparable full-timers around. Again that's why Government expects so few people to benefit, with only a minority of workers being employees and only a minority of them having a comparable full-time employee to measure against.
- It's not even clear who is to be termed a 'part-time' employee and how. No guidance is offered on calculating normal hours of work and no reference periods are suggested. When part-time workers work additional hours they may, on occasions, and perhaps regularly, work as many hours as full-time workers. Without guidance on how to define part-time in relation to full-time work a worker's status under the regulations becomes unclear and confused. Unscrupulous employers are left to concoct their own reference periods and definitions of full-time work and to leave part-time workers exposed and unprotected.
- Government refers only to an hourly rate. But part-time workers are often excluded from other payments like unsocial hours premia, bonus and commission schemes. That's one of the reasons why part-time workers' earnings have so consistently and substantially lagged behind full-timers' earnings. Unless part-time workers access plus payments on a pro rata basis the earnings gap and inequality will continue. As they stand, the Notes and regulations offer no help.
- Government talks about a lower rate where it's objectively justifiable, with a performance-related pay scheme perhaps justifying a lower rate. It overlooks the prior question of how people achieve performance standards and their training needs are met in the first place. We examine this question later.

## Overtime...what it says

The Government says:

*"As the law currently stands, part-time employees do not have an automatic right to overtime payments once they work beyond their normal hours. Only when part-time employees have worked up to the normal hours of comparable full-time employees do they have a legal right to overtime payments.*

**To comply with the law:**

- ***Part-time employees should receive the same hourly rate of overtime pay as comparable full-time employees, once they have worked more than the normal full-time hours."***

## What it means

The Government correctly identifies the legal position around overtime pay and access to it. It's been a longstanding, thorny issue for our members in part-time and in full-time work.

What Government fails to recognise is that many part-time workers are regularly required or persuaded to work longer than their contractual hours. This can happen on a sustained and even semi-permanent basis. They do so on single time rates which are not then used to calculate accrual of other benefits around pension contributions, maternity, holiday or redundancy entitlement.

The Government takes no account of additional hours working and their relationship to other accrued benefits. The absence of any advice or regulation means employers will be able to use part-time workers on a short hours basis, extend their hours regularly but deprive them of the accrued benefit those hours should bring. In other words, the worst kind of casualised, so-called 'flexibility' will be maintained.

## Contractual sick and maternity pay...what it says

The Government says:

*"The regulations apply directly to contractual sick and maternity pay. This means that there is an obligation on employers not to treat a part-time employee less favourably than a comparable full-time employee. The benefits that a full-time employee receives must also apply to part-time employees pro rata. The only exception will be if the different treatment is justified on objective grounds.*

**To comply with the law, part-time employees should not be treated less favourably than full-time employees in terms of:**

- **The rate of sick pay or maternity pay.**
- **The length of service required to qualify for payment.**
- **The length of time the payment is received."**

## What it means

Quite rightly, Government has ensured that all employees have the same pro rata access to sick pay and maternity pay schemes.

Employers will no longer be able to operate a minimum hours threshold to access schemes.

They will, however, still be able to use length of service qualifications to restrict access to schemes. The same length of service criteria should apply to everyone, as should the rate of pay and the length of time the sick pay or maternity pay is received.

## Occupational pensions...what it says

The Government says:

*"Scheme rules may need to be revised, to ensure that they comply with the new legislation.*

**To comply with the law:**

- **Employers must not discriminate between full-time and part-time employees over access to pension schemes, unless different treatment is justified on objective grounds.**
- **Calculation of benefits from the pension scheme for part-time staff should be on a pro rata basis of the calculation for full-time employees."**

## What it means

This section of the Notes is particularly unhelpful. The issue of part-time workers and pensions has been over simplified by Government and employers have been given no practical guidance whatsoever on how to handle the issue.

Many part-time workers, especially those on low hours contracts, are currently barred from joining occupational pensions schemes. Many employers argue that schemes will offer no real benefits to very low paid workers, so it is not appropriate for them to join. Employers also argue that admitting low paid workers to the occupational pension scheme pushes up their administrative costs.

The regulations will not deal with this problem. Employers may still be able to exclude part-time workers from pensions schemes if they can show there are objective grounds for doing so.

Low hours workers wishing to join the company scheme may have to argue they are being discriminated against on the basis they are part-time workers. This is at least a step forward; previously part-time workers had to prove indirect sex discrimination to try and get into their pension scheme.

It is very disappointing that Government has not clearly dealt with the issue of hours thresholds in occupational pension schemes. There is a lot that employers can do to open up their pensions schemes to low hours workers. The Notes fail to offer employers any practical guidance on how to do this. They also allow employers to argue that different treatment is justified on objective grounds to exclude low hours workers from occupational pension schemes. It is particularly important that low hours workers join pension schemes if the problems of poverty in old age are to be addressed.

Despite no guidance being issued on what factors might be regarded as objective justification for less favourable treatment, the European Court of Justice has previously been very slow to accept the justifications so far advanced.

## Access to Training...what it says

The Government says:

*“Under the regulations, there is an obligation on employers not to exclude part-timers as a matter of principle. However, there is no legal obligation on employers to structure their training in practice in order to accommodate part-timers. They should be aware that this may sometimes be covered by indirect sex discrimination.*

**To comply with the law:**

- **Employers should not exclude part-time staff from training simply because they work part-time.”**

## What it means

This is amongst the weakest and most damaging pieces of Government advice.

As it stands, the Government's advice to employers is that they must not deliberately and knowingly exclude part-time employees in principle from their training arrangements.

If, however, in practice employers happen to organise, time and locate their training activities in such a way that part-time employees are unable to access them, then that may be acceptable.

Government goes on to suggest in passing that there may sometimes be an element of indirect sex discrimination here. No advice is given on avoiding discrimination nor judgement passed in the event.

In the Union's view, indirect discrimination on grounds of hours of work or sex is often bound to be the case. It's extremely likely and a serious threat, rather than some hazy and distant possibility as Government would have it. For Government to indicate to employers that they don't need to bother structuring their training to accommodate part-time workers is not only unhelpful but inaccurate as well. There is a body of case law on the issue of part-timers' access to training and employers need to be guided through this.

In any event, lack of reliable access to training not only locks many part-time workers into low grade and relatively unrewarding work, it also unfairly excludes them from various skills and performance-related plus payments and depresses their earnings packages.

These are the sorts of payment which, elsewhere in its advice on its regulations, Government believes may form the basis of objectively justifiable differences in basic rates of pay.

By defending differential rates in this way and simultaneously enabling employers effectively to go on denying training to large numbers of part-time workers, Government risks binding part-time workers into a vicious circle of low earnings and a low skills base.

## Leave/holidays/breaks: annual leave, maternity and parental leave, career breaks...what it says

The Government says:

*“Part-time employees, like their full-time colleagues, are entitled to a minimum of statutory annual leave, maternity leave, parental leave and time off for dependents.*

*In some cases, companies extend these statutory entitlement with enhanced contractual conditions. When this occurs, part-time employees should have the same entitlements as their full-time colleagues, on a pro rata basis where appropriate.*

*In the case of career breaks, part-time staff should be treated no less favourably than comparable full-time staff.*

**To comply with the law:**

- **The contractual holiday entitlement of part-time staff should be pro rata to that of full-time employees.**
- **Contractual maternity leave and parental leave should be available to part-time employees as well as full-time employees.**
- **Career break schemes should be available to part-time employees in the same way as for full-time, unless their exclusion is objectively justified on grounds other than their part-time status.”**

## What it means

The Government’s advice is clear and helpful.

It remains silent, however, on the question of bank holiday working and part-time workers’ rights to pro rata leave for bank holidays.

Any part-time worker with hours generally scheduled for mid-week will often go through an entire year without any leave entitlement for any bank holiday and with significantly less paid leave, therefore, compared to other workers.

Clearly, this is less favourable treatment. While the Union has negotiated improvements for part-time workers in this area, the Government itself has no advice and millions of unorganised part-time workers are liable to remain at a disadvantage.

## Redundancy...what it says

The Government says:

*“In a redundancy situation, part-timers should be treated no less favourably than their full-time equivalent. Different treatment of full-time and part-time employees will only be lawful if it can be justified on objective grounds.*

**To comply with the law:**

- **The criteria used to select jobs for redundancy should be objectively justified, and part-time employees must not be treated less favourably than comparable full-time employees.”**

## What it means

Again, as far as it goes the advice is helpful.

It’s not particularly clear, however, about the grounds on which differential treatment for part-time workers might be unfair.



Without better advice it is always possible, here as elsewhere, that employers could make mistakes which were expensive and damaging to themselves, quite apart from their employees.

There are also particular problems here around the calculation of redundancy or early retirement pay for part-time workers.

Where calculations are made on the basis of final year salary it can seriously disadvantage workers who work part-time but who have also worked a substantial period over the years on a full-time basis (e.g. a woman worker who reduces her full-time hours after having a child, or a former full-time worker who reduces hours in the run up to retirement).

The flexible labour market will continue to mean that large numbers of workers will experience a wide and changing variety of hours packages over the years.

They may be full-time workers and employees by any definition for large parts of their working time and, equally plainly, part-time at the point of redundancy or early retirement.

Yet the Government is silent on what is a growing experience for millions of part-time workers and has no helpful advice for part-time workers and their employers in this respect. Without that advice and regulation, redundancy is likely to remain a far more painful and expensive experience for part-time workers than it is for their employers.

## Only limited success

So as they stand, the Government's advice and its regulations do cover a number of key issues around pay and other benefits, training, holidays and redundancy.

To some extent they're helpful but in other respects they throw up a range of real difficulties and obstacles for part-time workers.

# Part-time Work – What the Regulations Don't Say

## Gaps, lapses and silences

The Government's advice and its regulations take us some way forward.

At the same time, what it says and lays down in writing, as we've seen, begs some serious questions and leaves us in some real difficulty.

Worse still, those questions and difficulties often revolve around what it has omitted to say and do as much as what it has actually said and done.

Its gaps, lapses and silences are going to cause serious problems for workers and employers alike:

- No Code of Practice.
- Lack of clear and helpful definitions.
- No reliable means of comparing part-time and full-time.
- No reliable means of gathering useful evidence.
- No positive right to work part-time.

We look at each of these in turn below.

## No Code of Practice

The Government's own Employment Relations Act provides for a Code of Practice to accompany the regulations implementing the Part-Time Work Directive. Drafts were even produced for consultation involving the TUC. Yet in the event no Code of Practice has been forthcoming.

There is already a mass of European and domestic case law on part-time work and sex discrimination which has a direct bearing on the regulations. Without clear practical guidance through a Statutory Code of Practice employers are likely to continue, whether by accident or design, to treat part-time workers less favourably than full-time.

As it is, the Government's 'Notes' have no formal status at Employment Tribunals and the likelihood is that the bad employer will continue to undercut the good.

## Lack of clear and helpful definitions

The advice and regulations from Government on the distinction between 'employees' and 'workers' is at least relatively clear. It is also unfortunately extremely unhelpful.

By excluding 'workers' from the coverage of its regulations the Government has not only massively restricted the impact of them (with only one in six part-time workers effectively being covered) it has also flown in the face of the Part-Time Work Directive itself and unilaterally varied its scope.

It's possible that our Government has not properly implemented the terms of the Part-Time Work Directive in this respect and may be open to legal challenge.

In addition, its lack of attention to definitions of 'part-time' and 'full-time' has had results which are both unclear and unhelpful. Flexible workers in areas like retailing, for example, will have complex and changing packages of hours and their status and rights in effect as 'part-time' workers or employees may be constantly uncertain.

## No reliable means of comparing part-time and full-time

Having unilaterally reduced the scope of the Part-Time Work Directive so that only one in six part-time workers may be affected, Government has further reduced its potential impact by restricting rights under the regulations to those part-time employees who can identify a comparable full-time employee.

Yet we know very well that there are major areas of the private service sector like retailing, catering, cleaning and security where no full-time comparator exists and workforces or occupations are exclusively part-time.

It's the exclusion of this massive body of workers, which means that less than 1% of all part-time workers can expect to gain directly from the new regulations in any real sense.

Yet we already have the means to extend rights to people who have no relevant comparable worker. The Sex Discrimination Act allows for a 'hypothetical male comparator' in those numerous female-dominated workforces where there is no real male comparator. It's a well tested and invaluable means of delivering equality.

Indeed the terms of the Part-Time Work Directive do require that our Government identifies comparators in accordance with our national law, collective agreements or practice. The Sex Discrimination Act sets a precedent and in failing to provide for an hypothetical full-time comparator within its Part-Time Employee Regulations and advice, it's possible that our Government is again in breach of the spirit if not the letter of the Part-Time Work Directive.

## No reliable means of gathering useful evidence

It can be difficult for any worker to understand exactly what terms and conditions of employment apply to other workers.

That's especially so in large organisations with a wide variety of complex reward packages, schemes, incentives and benefits.

In these circumstances it's clearly very difficult to know what there is to know, let alone go about finding it out.

For that reason, workers pursuing their rights under the Sex Discrimination Act, for example, have been able to rely on a statutory questionnaire procedure to get to grips with the detail around the issues confronting them.

No such questionnaire procedure is available under the terms of the Part-Time Employees' Regulations.

Instead, the part-time employee is entitled to be provided only with a written statement from the employer explaining the reasons for any apparent difference in treatment the employee may have detected between a part-time employee and a comparable full-time employee.

That may be helpful, but it's not clear how the part-time employee is meant reliably and comprehensively to be able to detect all, or even any, differences in treatment in the first place. Part-time employees are simply left to their own devices at this point.

## No positive right to work part-time

There is an entire clause of the Part-Time Work Directive devoted to encouraging access to part-time work when preferred by workers and making sure no-one is dismissed for trying to get their hours varied in this way.

Yet our own Government's regulations make absolutely no reference to this part of the Directive. They are completely silent.

We live and work in a UK economy in which men work the longest hours in Europe and in which men and women have struggled for years to combine paid work and other personal and family commitments successfully. We also now have a Government which, to its credit, has actively designed and promoted family-friendly policies on a range of fronts.

Our own experience of part-time and casualised working in Usdaw spheres of influence has shown clearly that hours packages are invariably determined, changed and changed again unilaterally by

employers. The opportunity to have some say, to have some control over hours and changes to hours would have been invaluable to our members and others like them in part-time work.

That opportunity has thus far been denied them and the Government's silence on the right to work part-time represents a glaring and serious omission in its attempts to fashion a family-friendly labour market and a fairer and more productive economy.

## A lot of repair work to be done

Government has unfortunately only started the job. There's a great deal more to be done, a great deal to put right and a great deal still at risk.

Yet we still have an invaluable opportunity. After decades of abuse and neglect the rights and needs of part-time workers are now firmly on the agenda. The Government's regulations at least begin to address them and nothing can be taken away.

We now need to make the best of what we have and to do everything possible to make good whatever Government has left undone.

The next section looks at how we might do that and at what we need to do as a Union in both the industrial and the political arena in the months and years ahead.

# Part-time Work – Challenges Ahead

## An action programme for the Union

It's clear there's a great deal more work to be done on a range of fronts:

- Within the Union itself and amongst our own members.
- Involving employers and their representatives.
- Working and talking in partnership with the Labour Government.

## Building the Union

The growth in part-time working presents major challenges and opportunities to the Union.

We know we need to recruit people in part-time work. We already do. But we need also to ensure that members in part-time work feel able to come forward as lay representatives too, supported and resourced by the Union as a whole.

Currently, around one in three of all our members are in part-time work. But less than one in five of our active members are in part-time work. We need to do more to remove the obstacles to Union activity amongst part-time workers and to encourage, support and resource members in part-time work.

The Part-Time Employees' Regulations can help us to do that. They'll help to raise the profile and improve the status of part-time workers.

To do that more effectively, the Union is in the process of reviewing all our agreements with employers at national level to identify areas of potential discrimination against part-time workers. We'll then be using the Government's regulations to talk to employers about appropriate safeguards and improvements.

## Talking to employers

As ever, the better employers will be up to speed and are likely to have seen the light already. Just as predictably, the worst will inevitably drag their feet and continue to treat part-time workers unfairly. And there will be others who are simply not clear about what to do for the best.

Certainly the worst employers will need to see the error of their ways and the Union will not hesitate to use our best efforts to assist them, to represent members effectively and, if necessary, to apply the regulations through the Tribunal system.

At the same time, we will be working hard to present the business case for equal treatment:

- A recent TUC survey of 30 of the top 50 British companies found that all 30 of them ensured equal treatment for part-time workers on pay and holiday entitlements.
- Some 83% of them ensured equal treatment on training and 93% on other conditions.

Successful employers treat part-time workers the same as full-time workers. A committed workforce means a more productive workforce and a more profitable business. It's in no-one's interests to have a two-tier, divided workforce and the Union will be pressing the business case at every opportunity.

## Working with Government

We've made a start and after decades of abuse and exploitation we should value that.

At the same time, and by the Government's own account, its regulations as currently framed will only cover one in six part-time workers.

Yet Government also maintains that it wants to ensure that people in part-time work are not treated as second class employees with worse pay and non-wage benefits than those in full-time work.

Clearly, if we are to achieve that ambition in any meaningful way we must return to the regulations and substantially extend and strengthen them.

Part-time working continues to increase. Whole sectors of the economy and many major employers are massively dependent on part-time workers.

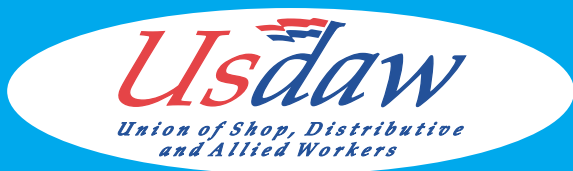
Unless those valuable workers are properly protected, and seen to be so, then they will continue to be treated unfairly, business efficiency will be harmed and the taxpayer will foot the bill.

In other words, all the Government's aims and objectives around fairness at work and all the principles we share together will be seriously compromised.

We will continue to work in good faith and in partnership to ensure that Government understands the need for further reform.

We are now approaching another General Election. Government needs our support and backing to win a vital second term. We need a fairness at work programme during that second term which continues to benefit our members and people like them. Increasingly that means people in part-time work.

We need to work together with this Government to ensure that happens and to ensure we have another Labour Government in place which will make it happen.



Usdaw  
Oakley  
188 Wilmslow Road  
Fallowfield  
Manchester  
M14 6LJ