THE PART-TIME WORKERS
(PREVENTION OF LESS FAVOURABLE TREATMENT) REGULATIONS 2007
AND CONNECTED LEGISLATION

A GUIDE FOR EMPLOYERS
AND
PART-TIME WORKERS

APPLICABLE FROM 30th SEPTEMBER 2007
ISSUED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT

June 2007
Version 1
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Introduction

Discrimination against part-time workers is both unfair and inefficient. As well as disadvantaging those who are subject to discrimination, it can also be detrimental to the development of a flexible labour market by potentially restricting the movement of labour. Full-time workers may be less willing to move into part time work for fear of being treated less favourably (e.g. lower hourly pay or less opportunity for advancement) whilst people looking for work may be discouraged from accepting part-time work if they expect to be treated less favourably than those in full-time jobs.

The first legislative measure to protect part-time workers was the Employment (Sex Discrimination) Act 2000. Those provisions within the Act on indirect sex discrimination allow employment decisions and practices which, while applied equally to all employees or job applicants, have a disproportionate effect on members of one sex, to be challenged. Where part-time workers are treated less favourably than full-time workers a female (or male) part-timer may be able to prove disparate impact and hence sex discrimination by demonstrating that a greater proportion of the part-timers are women than men (or men than women).

The Employment Act 2006 and various Regulations made under the Act have considerably enhanced protection for part-time workers.

- Firstly, the Act abolishes the differential qualifying periods for some employment rights that had previously applied. The Act puts the statutory employment rights of part-time employees on the same basis as for other employees.

- Secondly, the Act provides enabling powers for the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 (SI 104/2007). These Regulations, which are the main subject of this Guide, aim to ensure that part-time workers are no less favourably treated than comparable workers of the same employer except where any differential treatment can be objectively justified.

These measures are intended to encourage the greater availability of part-time employment, and to increase the quality and range of jobs which are considered suitable for part-time work or job-sharing.

This Guide explains how the Regulations and other relevant legislation work for employers and part-timers, what questions they need to consider and what action they should take. In addition to setting out the legal requirements, the Guide also offers suggestions for best practice in this area.

The Guide is written in general terms and should not be regarded as a complete or authoritative statement of the law. Determining the law is a matter for the Employment Tribunal and the High Court.
No responsibility can be accepted for errors or omissions, or their consequences.
1. **Overview of the Regulations**

1.1 **Coverage of the Regulations**

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 apply to **workers**. In general, workers are any individuals who work for an employer, whether or not under a contract of employment, who provide a personal service, as long as the employer is not their client or customer. So not only employees are covered by the term 'worker' but also, for example, the great majority of employment agency workers, casual or intermittent workers and some freelance workers.

There is no qualifying period for the right of a worker not to be less favourably treated on the ground of his or her part-time status; it applies to workers as soon as they become employed. Nor is there any age limit, even if the worker is over the employer's usual retirement age.

The Regulations do not, however, apply during recruitment and therefore do not confer any rights on applicants (but see further 3.1 below).

The Regulations make the custom and practice of each employer the determining factor as to whether the worker is a part-time worker or not. It follows that any worker whose working hours are fewer than the standard full-time working hours in the particular organisation will be treated as a part-time worker. Thus, for example, a person working 30 hours a week for employer A will be regarded as a part-time worker in that organisation if the full-time norm is 37 hours a week but will be regarded as a full-time worker on moving to organisation B where 30 hours a week is the full-time norm.

Whilst the Regulations give part-time workers the right not to be less favourably treated than full-time workers, the reverse is not the case.

1.2 **The right not to be less favourably treated**

The Regulations give part-time workers a general right not to be less favourably treated than full-time workers, where a part-time worker and full-time worker:

- are engaged by the same employer;

- are employed under the same type of contract. The Regulations identify contract types which are to be treated as different, as follows:
employees employed under a contract that is neither for a limited term* nor a contract of apprenticeship;

employees employed under a contract for a limited term that is not a contract of apprenticeship;

employees employed under a contract of apprenticeship;

workers who are neither employees nor employed under a contract for a limited term;

workers who are not employees but are employed under a contract for a limited term;

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;

• are engaged to do the same or broadly similar work, having regard where appropriate to the worker's qualifications, skills and experience; and

• work at the same workplace or, where there is no full time worker at the same workplace, work for the same employer at a different workplace.

Examples:

• A worker assigned by an employment business to work for a client on a part-time basis would have to compare his treatment with a full-time worker engaged by the same employment business and working for the same client.

* The Employment Act 2006 makes special provision for 'limited term contracts', that is, a contract of employment under which the parties agree at the outset that the contract will come to an end at a certain time or in certain circumstances. The Act defines three types of "limiting event" which will bring the contract to an end:

• in the case of a contract for a fixed-term, the expiry of the term;

• in the case of a contract made in contemplation of the performance of a specific task, the completion of the task;

• in the case of a contract which provides for its termination on the occurrence of an event (or the failure of an event to occur), the occurrence of the event (or the failure of that event to occur).
- A part-time limited term contract worker would not be able to compare her
treatment with that of either a permanent full-time worker or a full-time
limited-term contract employee; the only applicable comparator would be a
full-time limited-term contract worker.

The right conferred by the Regulations applies where any less favourable
treatment is on the ground that the worker is a part-time worker and there is no
objective justification for such treatment.

Except in those circumstances specified at 1.3, the right does not apply where
there is no full-time comparator and the Regulations make no provision for a
hypothetical comparator.

Where there are full-time workers and part-time workers meeting all the criteria,
the part-time workers should receive a proportion of the remuneration or other
benefits received by the full-time workers, calculated according to the different
number hours they each work in a week (this is called the "pro-rata principle"),
unless there are objective grounds for treating the part-time workers differently
from the full-time workers.

Where a contractual benefit is difficult or impossible to apply alternative way of
dealing with the particular dilemma should be considered.

**Example**

- An employer provides company cars to full-time employees. Part-time
employees are given the options of being provided with a less expensive car
or receiving an allowance equivalent to the pro-rata benefit.

Where there is no workable solution then the employer may consider whether
there is **objective justification** for not providing the benefit.

**Example**

- An employer excludes part-time workers from a share option scheme because
the value of the share options is so small that the potential benefit to the part-
timer of the options is less than the likely cost of realising them.

Consideration as to objective justification may involve the employer considering
whether any less favourable treatment is:

- to achieve a legitimate objective, for example a genuine business objective;
- necessary to achieve that objective; and
- an appropriate way to achieve that objective.
Where there is no objective justification for not providing the benefit the employer should grant the part-time worker the equivalent benefit to that that enjoyed by comparable full-time workers.

1.3 Workers who go from full-time to part-time work, or go on part-time work after an absence from full-time work

The Regulations make special provision for a worker who:

• goes from full-time to part-time work (following either termination or variation of his or her contract); or

• after an absence from full-time work of less than 1 year (whether or not due to termination of his or her contract) returns to the same job or a job at the same level on a part-time basis,

so that in each case the worker will be protected against any less favourable treatment on account of his or her new part-time status even though there may be no actual full-time comparator.

1.4 Scope of matters affected by the Regulations

The Regulations apply to all benefits conferred by a worker's contract including any of the following:

• hourly rates of pay;

• overtime rates (but a part-time worker will not be entitled to overtime until he or she has worked more than the normal hours of the comparable full-time worker);

• benefits under any contractual sick pay and maternity / paternity pay schemes. Where such schemes are operated for full-time workers, part-time workers should be entitled to receive the same rate of sick pay, maternity pay or paternity pay (on a pro rata basis), to qualify for payment after the same length of service, and to be paid for the same length of time;

• any annual leave entitlement beyond the statutory minimum of 4 weeks conferred by the Annual Leave Regulations 2007;

• public holidays;

• any contractual maternity, paternity or parental leave beyond the minimum provided by the Employment Act 2006 and associated Regulations;

• access to any occupational pension schemes and pension scheme benefits;
• access to and benefits from any profit sharing scheme or share-option scheme operated by the employer;

• any other contractual benefits such as private medical insurance, staff discounts, subsidised loans, company cars etc.

The Regulations also apply to any other type of less favourable treatment on the ground of a worker's part-time status including:

• access to training;

• access to promotion; and

• fairness of treatment vis-à-vis full time workers when workers are selected for redundancy.

1.5 The right to receive a written statement of reasons for less favourable treatment

A part-timer worker who believes he or she has been treated less favourably than a comparable full-timer can make a request to his or her employer for a written statement of reasons for such less favourable treatment. The employer must respond to the request within 21 days. Where the employer fails to provide a statement or where the statement that is provided appears to be evasive or equivocal the Employment Tribunal will be entitled to draw an inference that the employer has infringed the worker's rights under the Regulations.

It is not necessary to provide such a statement where an employee has been dismissed and is entitled to a written statement of the reasons for his or her dismissal under section 110 of the Employment Act 2006

1.6 Detriment and dismissal

A worker has the right not to suffer any detriment (including termination of his or her contract) for seeking to enforce the right conferred by the Regulations, assisting another worker to do so, or alleging that the employer has infringed that right.

Where the worker is an employee and the detriment he or she has been subjected to is dismissal such a dismissal will be automatically unfair under Part X of the Employment Act 2006.

The right not to be treated less favourably, and the right not to suffer detriment 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. 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.

If the Tribunal finds that an employee was unfairly dismissed, it may order the employer to reinstate or re-engage that person. Where no such order is made the Tribunal may award compensation.
2. **Complying with the Regulations and other relevant legislation**

2.1 **Reorganising hours**

Reorganising the hours of work is a contractual matter between the employer and worker. However, in reorganising workloads, employers will need to avoid treating part-time workers less favourably than full-time staff. They should also be aware that in certain situations they may be vulnerable to claims for indirect sex discrimination under the Employment (Sex Discrimination) Act 2000.

**To comply with the law:**

In reorganising workloads, part-time workers should not be treated less favourably than full-time workers, unless this treatment can be objectively justified.

2.2 **Promotion for part-time workers**

Part-time workers should be given the same opportunities as other workers to seek promotion. Not only is this an area where an employer could be open to a claim of less favourable treatment, but a fair promotion policy will bring benefits to the employer.

It should also be borne in mind that some part-time staff may be willing to work full-time on promotion, because the extra pay available would allow them to afford childcare or buy in the necessary help.

**To comply with the law:**

Previous or current part-time status should not of itself constitute a barrier to promotion to a post, whether the post is full-time or part-time.

2.3 **Rate of pay (including enhanced pay (bonus pay; shift allowances; unsocial hours payments))**

Part-time workers must receive the same basic rate of pay as comparable full-time workers. They must not be given a lower hourly rate, unless justified on objective grounds.

An example where a different hourly rate might be objectively justified would be a performance related pay scheme. If workers 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.
With the exception of overtime (see 2.4), in general, the same principle applies to enhanced rates of pay. In special circumstances, special rates of pay apply. These may include bonus pay, shift allowances, unsocial hours payments or weekend payments. In these cases, part-time workers are entitled to the same hourly rate as a comparable full-time worker.

To comply with the law:

Part-time workers should receive the same hourly rate as comparable full-time workers.

Examples of complying with the law:

- **Bonus pay**: A firm awards its workers a Christmas bonus. Its part-time workers receive a pro rata amount, depending on the number of hours they work.

- **Shift allowances**: A store has both full-time and part-time workers, working early, day and late shifts. The early and late shifts attract time-and-a-half pay for both full-time workers and comparable part-time workers.

- **Unsocial hours**: A part-time care assistant receives the same unsocial hours payment for working between midnight and 6 a.m. as her comparable full-time colleague.

2.4 Overtime

Part-time workers do not have an automatic right to overtime payments once they work beyond their normal hours. Only when part-time workers have worked up to the normal hours of comparable full-time workers do they have a legal right to overtime payments.

This does not affect the right of part-time workers, where they are entitled, to receive unsocial hours payments, weekend payments or other forms of enhanced pay (see 2.3).

To comply with the law:

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

Example of complying with the law:

A hotel, in which full-timers work five 8 hour days per week, has a busy period in the run up to Christmas. All staff are asked to work extra hours. A part-time worker who normally works 9-12 agrees to work 9-2. She receives her normal
hourly rate of pay, with no overtime payment, for the additional hours. The same
applies to a second part-time worker who normally works two days a week, and
agrees to work four days a week. A third part-time worker normally works three
days a week, and agrees to work for five days and one evening. She receives her
normal pay rate for the extra two days, but receives an overtime payment for the
extra evening.

2.5 Profit sharing and share option schemes

Participation in profit sharing and share option schemes has sometimes been
limited, and those who work part-time excluded. This can undermine one of the
key aims of these benefits - to motivate staff, and make sure they have a stake in
their employer's future success.

The Regulations will make most exclusions of part-time staff from profit sharing
or share option schemes unlawful. Part-time workers should receive a pro rata
level of benefits in line with the number of hours they work, unless their
exclusion can be objectively justified.

In the case of share option schemes, there may be cases where exclusions can be
objectively justified, for example where the value of the share options was so
small that the potential benefit to the part-timer of the options was less than the
likely cost of realising them.

To comply with the law:

Part-time workers should be able to participate in profit sharing or share option
schemes available for full-time staff, unless there are objective grounds for
excluding them.

The benefits part-time workers receive under these schemes should be pro rata to
those received by comparable full-time workers

Example of complying with the law:

A retailer operates a profit sharing scheme. The benefits received are determined
by the sales figures of individual workers. All staff, whether full-time or part-
time, participate in the scheme.

2.6 Contractual sick and maternity pay

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 worker less
favourably than a comparable full-time worker. The benefits that a full-time
worker receives must also apply to part-time workers on a pro rata basis. The only
exception will be if any different treatment is justified on objective grounds.
To comply with the law:

Part-time workers should not be treated less favourably than full-time workers in terms of:

- calculating the rate of any sick pay or maternity pay;
- the length of service required to qualify for payment; or
- the length of time for which the payment is received.

Example of complying with the law:

A hotel worker who works 2 days per week has been with the hotel for 7 months, when he becomes ill and is absent for two weeks. The hotel's sick pay scheme entitles staff to full pay on certified sick leave after 6 months' service for up to 1 month of absence. The worker receives full pay (i.e. 2 days per week) for the whole of his absence.

2.7 Access to Occupational Pensions

As from 6th April 2006, under the Pensions Act 1995 (Parliament) and the Occupational Pensions (Equal Treatment) Regulations 1995, as applied to the Isle of Man, any occupational pension scheme which does not include an equal treatment rule is deemed to do so. An equal treatment rule entitles a person employed at an establishment in the Isle of Man to equal treatment with a person of the opposite sex in relation to membership of, and benefits under, the scheme, if both are employed in the same employment either on like work or on work rated as equivalent.

- in the same employment means in the same establishment, or in another establishment of the same or an associated employer where common terms and conditions are applied either generally or to relevant employees;

- like work means work of the same or a broadly similar nature where the differences, having regard to their frequency, nature and extent, are not of practical importance;

- work rated as equivalent by a job evaluation study which has rated both persons' work as equivalent in terms of various headings (e.g. effort, skill, responsibility etc.).

An equal treatment rule does not apply to an inequality which is genuinely due to a material factor other than the difference of sex. Inequalities which are due to the difference of sex are however permitted in 2 cases:
• 'bridging pensions' and different levels of indexation, to take account of the different ages at which men and women become entitled to the State retirement pension;

• differences in certain contributions and benefits which are actuarially justified by the difference in life expectancy of men and women.

As most part-time workers are women, the majority of part-time staff already have access to pension schemes irrespective of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 because excluding part-time workers might constitute unlawful sex discrimination against women. However, coverage of the Pensions Act and Regulations made under it is not universal. Employers can deny access to part-time workers if the exclusion can be objectively justified on a ground unrelated to sex and there is no disparate impact on women.

Under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007, employers cannot deny access to either male or female part-time workers, unless different treatment is justified on objective grounds. Scheme rules may need to be revised, to ensure that they comply with the new legislation.

**To comply with the law:**

Employers should not discriminate between full-time and part-time workers over access to pension schemes, unless different treatment is justified on objective grounds.

**Example of complying with the law:**

Before the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 came into operation, an employer employing full-time and part-time drivers denied the part-time drivers access to the pension scheme. This was not unlawful as, in this company, men and women worked full-time and part-time in equal proportions, and so indirect sex discrimination could not be proved because there was no disparate impact on women. Under the Regulations, the employer is required to offer the part-timers access to the pension scheme on the same basis as the full-time workers, unless their exclusion can be justified on objective grounds.

### 2.8 Access to training

Access to training is essential if part-time workers are to work effectively, and employers are to make the most of their staff. There is a strong business case for making sure that staff are equipped to do their job well, and their skills are up-to-date. Investing in training, when well-targeted, is investing in the future of the organisation. It also shows a commitment to workers which should lead to an increased level of staff morale and greater commitment to the organisation.
Part-time workers often encounter difficulty in obtaining access to training - especially career orientated development or vocational training. Either they are excluded entirely, or, though they are in theory entitled to attend, their other responsibilities prevent them from participating because of the inconvenient hours. Denying part-time workers access to training will constitute less favourable treatment.

**To comply with the law:**

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

### 2.9 Redundancy

In a redundancy situation, it used to be common practice to make part-time workers redundant before full-time workers. However, the automatic redundancy of part-time staff is likely to be unlawful for two reasons: treating part-time workers less favourably than their full-time equivalents is likely to infringe the Regulations, whilst, in addition, since many part-time workers are women, it is likely to be a form of unlawful sex discrimination under the Employment (Sex Discrimination) Act 2000. Different treatment of full-time and part-time workers 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 workers must not be treated less favourably than comparable full-time workers.

**Example of best practice:**

A library employs an equal number of full-time and part-time staff. A shortage of funding forces the library to reduce the money it spends on staff. The library offers three voluntary schemes - voluntary redundancy, early retirement, and a reduction in hours. However, savings still need to be made. The library therefore looks at the level of public interest (measured by borrowings and attendance) compared both to its opening hours and to its different sections. It finds that the library is least used on the middle three days of the week, and that the fiction and reference sections have seen marked drops in their popularity. The library therefore balances demand and staff availability cover by making three full-time posts and one part-time post redundant in the fiction and reference sections, and two part-time posts covering Tuesday to Thursday.
2.10 **Other benefits: health insurance; subsidised mortgages; staff discounts; company cars**

Where possible, these and similar benefits should be provided pro rata. In some cases, this may prove difficult. In the case of a benefit such as health insurance or company cars, that cannot easily be divided, employers will have to decide whether to withhold it from part-time workers. Employers may decide that the cost of extending such a benefit to part-time workers would be prohibitive. However, it will not be enough for employers to show that a benefit could not be applied pro rata. They must also show that the decision is justified on objective grounds.

Employers providing company cars or a car allowance might, by way of best practice, calculate the financial value of the benefit to a full-timer and apply that value pro rata to a part-timer.

Alternatively, if the benefit or allowance was given to a full-timer every year, then a part-timer working half the full-time hours might be given the benefit or allowance every two years.

Other benefits such as clothing allowance, travel allowance or staff discounts might also be extended to part-timers in line with these principles.

**To comply with the law:**

Benefits such as subsidised mortgages and staff discounts should be applied to part-time workers, unless an exception is justified on objective grounds.

Where a benefit, such as health insurance or a company car, cannot be applied pro rata, this is not of itself an objective justification for denying it to part-time workers. Such less favourable treatment of part-time workers will still need to be justified on objective grounds. These might include the disproportionate cost to the organisation of providing such a benefit, or the imperative to meet a real need of the organisation.

**Example of complying with the law:**

A finance company provides staff mortgages at a reduced rate of interest for all staff, both full-time and part-time. The same preferential rate of interest applies regardless of hours worked and likewise the same multiplier to determine the mortgage advance.

**Examples of best practice:**

- As part of its package of benefits for workers, a company provides them with new company cars every two years. The company calculates that the benefit to part-timers, many of whom work less than 50% of normal hours, would be
disproportionate to the cost of providing the car. After consultation, it agrees to calculate the financial value of the benefit, and to provide it to part-timers on a pro rata basis. After the calculations are complete, it is found that the benefit is worth £7 000 per year. A part-time employee working a 40% week therefore receives £2,800 per year towards their travel expenses.

- A post as a health visitor requires considerable driving, and hence a car is attached to the job. Two job sharers take on a single post. They share the car in order to fulfil their duties, each using the car on the days that they work.

2.11 Leave / holidays / breaks: annual leave, family leave; career breaks

Part-time workers, like their full-time colleagues, have a statutory entitlement to a minimum of 4 weeks' paid annual leave. Dependant on their sex and circumstances they may also be entitled to maternity, paternity or adoption leave and (if they have a child with a disability) parental leave. Some of these entitlements may be extended or enhanced by contractual conditions. Where this is the case part-time workers should have the same leave entitlements, on a pro rata basis, as their full-time colleagues.

To comply with the law:

The holiday entitlement of part-time staff should be pro rata to that of full-time workers.

Any contractual maternity, paternity, adoption or parental leave should be available to part-time workers as well as full-time workers.

Career break schemes should be available to part-time workers in the same way as for full-time workers, unless their exclusion is objectively justified on grounds other than their part-time status.

Example of complying with the law:

- **Holiday entitlement:** An engineering firm allows its full-timers, working five days a week, 25 days holiday a year. A part-time worker who works for 2 ½ hours every afternoon would be entitled to 25 days' holiday paid at her usual rate of 2 ½ hours per day. A worker working 3 days a week for the same firm would be entitled to three-fifths of the leave entitlement, a total of 15 days paid at her usual rate.

- **Contractual maternity, paternity, adoption and parental leave:** A bank provides its workers with four weeks' extra paid maternity leave, in excess of their statutory entitlement. A part-time worker who works 20 hours a week will be entitled to the full 4 weeks (of 20 hours) in extra paid maternity leave.
• **Career breaks:** A retail store allows its workers a career break of up to two years. The qualifying period for the break is three years. A part-time worker is entitled to a two year break under the same conditions as a full-time worker.

2.12 **Bank holidays**

The rights of part-timers in relation to bank holidays (and other public holidays) may not always be clear.

Under the Regulations, part-timers should not be treated less favourably than comparable full-timers in their entitlement to bank holidays. Allowing full-timers the day off, but not part-timers, is less favourable treatment and will be unlawful under the Regulations unless there is objective justification.

To comply with the law, an employer must treat part-time workers as favourably as they treat full time workers. In some circumstances it may be enough simply to give workers a paid day off if their day of work happens to coincide with the bank holiday, without giving time off in lieu to those who would not ordinarily work on that day. This may produce a fair result, for example where a shift system means that full-time and part-time workers are equally likely to be scheduled to work on a public holiday. Also where an employer operates 7 days a week a policy of giving neither full-time workers nor part-time workers days off in lieu of bank holidays which fall on days when they do not work will be in compliance with the Regulations.

In other circumstances, where workers work fixed days each week, a policy of giving workers a paid day off if their day of work happens to coincide with the bank holiday, without giving time off in lieu to those who would not ordinarily work on that day, could put part-timers at a disadvantage. For example, because most bank and public holidays fall on a Monday, those who do not work on Mondays will be entitled to proportionately fewer days off. In many workplaces, these workers will predominantly be part-timers. In such cases, the least risky course of action may be to remove the disadvantage suffered by those staff who do not receive particular days off as a result of their particular working pattern, by, for example, giving all workers a pro rata entitlement of days off in lieu according to the number of hours they work.

Whether such an approach meets the requirements of the Regulations will depend on the circumstances of the particular case. Whatever approach they choose to adopt, employers should bear in mind the principal that it is unlawful to treat part-timers less favourably than comparable full-timers unless there is objective justification for doing so.

Employers or part-timers who are unsure as to how the law should be implemented in a particular situation may wish to seek advice from the Manx Industrial Relations Service (see 4).
2.13 Requests to increase or decrease hours and to transfer between full-time and part-time employment

Whereas there is no legal right for a worker to be able to change his or her hours of work the Employment Act 2006 and the Flexible Working Regulations 2007 have provided employees with a right to request flexible working under certain circumstances.

Whereas the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 apply to workers (see 1.1) the Flexible Working Regulations apply only to employees.

An employee, who has been continuously employed for at least 26 weeks, has the right to apply to his or her employer to request flexible working in order to enable him or her to care for a dependant. A request may not be made within 12 months of a previous request.

A 'dependant' is —

- the employee's husband or wife;
- the employee's child, if under the age of 6 or disabled (a child is 'disabled' if he or she is entitled to disability living allowance);
- the employee's parent; or
- a person who lives in the same household as the employee, but is neither an employee, tenant, lodger or boarder of the employee, nor a child over 6.

An employee can request:

- a change in working hours;
- to work from home.

If a request is accepted, it will lead to a permanent change in the employee's terms and conditions of employment.

The procedure

A request must be made in writing and state:

- that it is an application for a change in the terms and conditions of employment;
- the change requested and the date when it should take effect;
• what effect the employee thinks the change will have on the employer and how that effect might be dealt with;

• how the employee meets the conditions as to his or her relationship with the dependant to be cared for.

Unless the employer notifies the employee within 28 days that the request is agreed to, the employer must arrange a meeting with the employee within that period to discuss the request. The employer must give the employee notice in writing within 14 days of the meeting, either agreeing to the change and the starting date or refusing the request. Where the request is refused, the notice must state the grounds of refusal and inform the employee of the right of appeal.

The employer may refuse a request only on one or more of the following grounds:

• the burden of additional costs;

• detrimental effect on ability to meet customer demand;

• inability to re-organise work among existing staff, or to recruit additional staff;

• detrimental impact on quality or performance;

• insufficient work at the time the employee proposes to work;

• planned structural changes.

The employee may appeal against refusal of the request, and the employer must hold a further meeting to discuss the appeal within 14 days. The employer must notify the employee of the decision on the appeal within 14 days of the meeting.

An employee is entitled to be accompanied at any meeting by a fellow worker of his or her choice, who may address the meeting and confer with the employee. The fellow worker is entitled to take time off with pay for this purpose.

**Detriment and dismissal**

The employee has a right not to suffer detriment for seeking flexible working, exercising any right against the employer, bringing Tribunal proceedings, or alleging a ground for bringing proceedings. Where the detriment the employee has been subjected to is dismissal such a dismissal will be automatically unfair under Part X of the Employment Act 2006.

Except where the request is disposed of by agreement or withdrawn, the employee may make a complaint to the Employment Tribunal that:
• the employer has not followed the above procedure;

• the employer's decision was based on incorrect facts.

A complaint may not be made until the employer notifies the employee of the decision on appeal, or fails to hold a meeting or to notify a decision within the time allowed, and must be made within 3 months of the appeal decision or failure, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the claim is successful the Tribunal makes a declaration, and may order the employer to reconsider the request and award compensation of up to 8 weeks' pay.

**Sex Discrimination**

A female employee denied flexible working may be able to present a claim of indirect sex discrimination under the Employment (Sex Discrimination) Act 2000 (ESDA) instead of or as well as a complaint arising out of a breach of the Flexible Working Regulations 2007. A female worker who is not an employee may also be able to present a claim of indirect sex discrimination under the Employment (Sex Discrimination) Act 2000. No minimum service requirement is necessary to bring such a claim.

Note that where an employer allows women to change their hours, it follows that requests from men they must also be treated on the same basis. Where this is not the case the employer may be liable for a claim of direct sex discrimination.

**Further information**

Further information on requesting flexible working is available in a separate booklet "Flexible working: the right to request and the duty to consider: a guide for employers and employees". A copy of the booklet, together with sample letters and forms, can be downloaded from the Ded website [www.emplaw.gov.im](http://www.emplaw.gov.im).

**To comply with the law:**

An employer must consider a request by an employee with at least 26 weeks' service who asks for flexible working in order to enable him or her to care for a category of dependant falling within the Flexible Working Regulations 2007.

The employer also needs to think carefully as to whether there is a good business reason for refusing a request for flexible working by any worker (not just an employee) irrespective of his or length of service. Also, if the employer allows women to change their hours, then they must treat requests from men on the same basis or be liable for claims of direct sex discrimination.
3. **Best Practice guidance**

3.1 **Recruitment**

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 do not cover external recruitment. However, if employers who are recruiting do not consider applications from people who want to work part-time or job-share, then they will be limiting the field of applicants and may not recruit the best person for the job.

Such employers may also in certain situations be vulnerable to claims for indirect sex discrimination under the Employment (Sex Discrimination) Act 2000 which does cover recruitment. As most applicants wishing to work part-time are women, excluding them may constitute unlawful sex discrimination under that Act.

**As best practice, it is recommended that:**

- employers should review periodically whether the posts they are offering could be performed by part-time workers; and

- when approached by an applicant who wishes to work part-time, consideration should be given as to whether part-time work arrangements could fulfil the requirements of the post.

3.2 **Making a wider range of jobs available part-time**

Part-time workers often suffer from others' perception that they are not interested in moving on from the job they are doing. Just because someone works part-time does not mean he or she does not want to continue developing a career. Reducing or blocking the opportunities of part-time workers to move around the organisation may demoralise them, or cause them to look for other job opportunities elsewhere. Conversely, allowing part-time workers to apply for other posts ensures that the employer will be able to pick the best person for the job, and will not be excluding talented individuals.

It may not be necessary, or even practical, to check every post in an organisation for its suitability for a part-time worker. However, the fact that a post is currently being done full-time should not be used to prevent people who wish to work part-time from applying for it. A post can be reviewed using the process outlined at 3.7 below for dealing with requests for reduced hours. Sometimes the hours a post necessarily requires are incompatible with the hours the applicant currently works. If the applicant would otherwise be suitable for the job, the recruiter could discuss with the applicant whether he or she would be able to work other hours in order to fit in with the demands of the job.
As best practice, it is recommended that:

At all levels of the organisation including skilled and managerial positions, employers should seek to maximise the range of posts designated as suitable for part-time working or job-sharing.

3.3 Jobsharing

Jobsharing arrangements are a special form of part-time work, where a full-time job is divided between two part-time workers. The job can be divided in a number of ways to suit the circumstances of the workers and their employer. For example, one jobsharer may work mornings, the other afternoons, or each may work 2½ days a week. Sometimes there is a hand-over period when both jobsharers are working.

This arrangement means both jobsharers have predictable hours, which allows them to make other arrangements (for example, childcare), while the employer knows there will always be cover. The employer also benefits from having two people working on a project, with their combined energy, skills and experience, rather than one, and is likely to have cover when one job sharer is away or on holiday.

However, it can be difficult to organise a jobshare arrangement, because of the need to find two workers who can do the job, are capable of working together and who want to work complementary hours. Some large employers may organise a database of staff who want to jobshare. This can be particularly useful in helping women with children who wish to return to work find a suitable jobshare 'partner'.

As best practice, it is recommended that:

- employers seriously consider any requests for jobsharing;
- larger employers consider keeping a database of those interested in entering jobsharing arrangements.

3.4 Refusal by workers to change from full-time to part-time employment or vice versa

Changing the total number of hours a worker works has important implications for the commitments that a person can take on outside the workplace. An increase in hours may hamper caring arrangements. A decrease in hours may cause serious financial difficulties.

In some cases, the operational needs of an organisation may make it necessary to change the number of hours of workers. This is a contractual matter, and must be agreed with the workers concerned.
In some cases, insisting that a part-timer works full-time can constitute indirect sex discrimination.

As best practice, it is recommended that:

Full consideration should be given to the circumstances of individual workers, and changes should be made with as much notice as possible.

3.5 Providing information to workers

Giving part-time workers less information on vacancies than full-time workers would be less favourable treatment. While it is unlikely that an employer would have a deliberate policy of denying information to part-time workers, organisations should examine their practices to see if there is anything which might disadvantage part-time workers. If many vacancies are filled by word of mouth, managerial discretion, or other informal management practices, this might make it harder for part-time workers to find posts in areas which do not have any part-time workers. These matters are important as part of an overall equal opportunities policy.

Employers need to be able to consider the best possible candidates for available posts. Equally, workers need to make informed decisions about varying their hours, or transferring between full-time and part-time work. Information on particular posts needs to be displayed where part-time workers can see it. It also needs to be circulated in plenty of time, so that potential candidates have the opportunity to consider and plan any necessary changes in their out-of-work routine.

As best practice, it is recommended that:

- employers should periodically review how individuals are provided with information on the availability of part-time and full-time positions.

- organisations should consider how to make it easier for workers to vary their hours, including transferring between part-time and full-time work, to the benefit of both workers and employers.

3.6 Providing information to trade unions and other representative bodies

Larger organisations may have formal or informal bodies for representing the workforce in discussions with management, such as trade unions. These bodies may find it useful to be kept informed about certain aspects of part-timers’ working patterns. The exact details as to what information is required should be worked out with the representatives themselves. Topics could include:
• the overall human resources policy in regard to part-time work, and plans to change it;

• how many part-time workers there are, where they are employed in the organisation, and what grade or level they are at;

• whether any requests to change hours have been refused, and if so, why;

• what training opportunities there are for part-time workers; what the take up is of these; and what is being done to ensure part-time workers have equal access to promotion.

3.7 Informal procedures aimed at facilitating flexible working

Whilst the statutory right of employees to request flexible working is set out at 2.13 employers and workers may nevertheless wish to establish wider informal procedures both to facilitate requests to transfer between full-time and part-time employment and to increase or decrease working hours. Such procedures could:

• be used by workers wishing to change from full-time to part-time employment for any reason (not just those set out at 2.13), or conversely from part-time to full-time employment; or

• be used by persons without 26 weeks' service or by workers who are not employees.

When workers request to work part-time, it is helpful if their employer has procedures for handling their requests. This could include consideration of some or all of the following factors:

• Does someone need to be present in the post during all hours of work?

• Can the post be filled as a job share?

• Is there a suitable candidate for a job share? Could one be recruited?

• Can all the necessary work be done in the hours requested?

• Can the job be redefined to make it easier to do part-time?

• Is there another job of similar level which the worker could do part-time?

• Is the change for a known period?

• How much would it cost to recruit and train a replacement if the worker left?
• What benefits would the organisation get from this arrangement? (E.g. more commitment, retaining a valued member of staff, a better skilled worker if time is used for training or education, a lower wage bill; increased cover);

• The effect on the morale and commitment of other staff.

Where workers request to increase hours or work full-time some of the factors to be taken into account may include:

• whether there is sufficient work for those hours;

• whether the extra hours could be used to reorganise a number of jobs more efficiently;

• whether the organisation can afford the increase in pay; and

• whether the increase may lead to savings on recruitment.

Even where the employer has recognised procedures, there may need to be discussion focusing on the worker's tasks and responsibilities, and how a change in hours can fit in. This may require the employer and worker to invest time and effort in order to work out an arrangement which suits them both. The worker requesting a change in hours should try to present a good argument as to why this would help the organisation. A successful solution will be one that both ensures that the job gets done, and that the morale of the worker is enhanced.

**As best practice, it is recommended that:**

(In addition to complying with the statutory right to request flexible working) employers should look seriously at wider requests to change to request flexible working and, where possible, explore with their workers how the changes that have been requested can be accommodated.

**3.8 Other measures to facilitate part-time working**

In larger organisations it may be appropriate to consider:

• whether it would be cost-effective to provide childcare facilities onsite; and

• whether a contribution towards childcare costs could be offered.

Both large and small organisations might consider whether it would be appropriate to consider introducing flexible forms of working, such as term-time working, lunch-time working, flexi-time, and home-working, a parental leave scheme and reduced hours working.
3.9 Training

Employers should also look at whether their training is accessible to part-time workers. For example, it can be difficult for part-time staff to attend residential courses if they have other commitments. It would be easier if such staff could attend courses which run at times when they are normally working. Employers should ensure that the needs of part-time workers are taken into consideration when the structure, time and location of training is being planned.

Part-time workers should not lose out in their training simply because of their part-time status. In cases where employers cannot arrange the time and location of training to suit part-time workers as much as full-time workers, a range of other options should be considered. Possible measures to support the career development of part-time workers include:

- paying part-time workers (at their normal rate of pay) for the extra hours they attend outside their normal working hours;
- offering equivalent training from an alternative provider at a convenient time and place;
- offering training of a comparable level and quality in another area;
- offering other training methods, such as open or distance learning courses.

Employers with few part-time workers may consider this too expensive, but their full-time workers may also benefit from being able to use different styles of learning.

In a fast-changing job market, it is as important for part-time workers as for full-time workers to prepare for their future. Employers should consider all applications for vocational training and career development on their merits. Addressing the career development needs of part-time workers will also help employers to retain their staff.

In certain circumstances, part-time work can facilitate training in its own right. Workers who are taking a career break, for example parents or carers, can find periods of part-time work a useful way to keep in touch with developments in their organisation. Employers should consider what training, on and off the job, would be most useful for workers in this situation. If properly handled such an arrangement can be a significant benefit to the employer. Not only does the organisation keep the services of the worker during the career break, but when the worker returns he or she will be able to play a full role in the organisation straight away.
As best practice, it is recommended that:

The provision of training should be arranged so as to ensure that it is as conveniently located and timed for part-time staff, unless this is not possible.

Example of best practice:

A media company employs ten part-time and ten full-time staff. The company provides IT training for its staff. The course consists of two full days of training. This arrangement would make it difficult for its part-time workers to attend since they work mornings only. After a request from the company, the trainer agrees to offer the course as four mornings.
4. Further information

Further information regarding the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 and related matters can be obtained from the Manx Industrial Relations Service (MIRS).

Where a worker wishes to make a claim under the Regulations, MIRS can offer conciliation in order to help the employer and worker reach a settlement without the need for a Tribunal hearing. This service is free of charge.

Contact details are as follows:

Manx Industrial Relations Service
5th Floor
Victory House
Prospect Hill
Douglas
IM1 1EQ

Tel. 672942
Fax 687050
Email iro@ir.gov.im
Web www.mirs.org.im

List of Publications

The following publications can be downloaded from the DTI website, www.emplaw.gov.im

Codes of Practice

- Time Off for Trade Union Duties and Activities 1992
- Sex Discrimination in Employment 2001
- Recognition of Trade Unions 2001
- Disciplinary and Grievance Procedures in Employment 2007
Department of Economic Development Guides

- Isle of Man Employment Rights: A Guide for Employers, Employees and Workers
- Maternity Rights - a Guide for Employers and Employees
- Paternity Rights - a Guide for Employers and Employees
- Adoption Rights - a Guide for Employers and Employees
- Parental Leave for Parents of Disabled Children - a Guide for Employers and Employees
- Flexible Working –The Right to Request and the Duty to Consider
- Employment Status and Employment Rights of Agency Workers
- Guidance on Written Particulars
- Holidays and Holiday Pay
- Employment Act 2006 - Timetable Right by Right
- A Detailed Guide to the Minimum Wage
- A Brief Guide to Whistleblowing

Manx Industrial Relations Service Guides

- A Guide to Redundancies
- A Guide to Preparing Written Statements of Terms and Conditions of Employment
- A Guide to Conciliation