in vehicles that are subject to tachograph requirements), such as goods vehicles over 3.5 tonnes, coaches and inter-urban bus services. The Regulations cover mobile workers in the haulage industry and those who work for companies with their own transport section and agency drivers.

Employees whose working time is not measured or predetermined are exempt from the provisions relating to the 48-hour week, daily and weekly rest periods, rest breaks and limits on night work but not the holiday provisions. Examples given in the WTR include 'managing executives or other persons with autonomous decision making powers, family workers and ministers of religion'. This seems to be a very limited exception that will only cover individuals who can choose the hours which they work. It is not likely to cover professional staff who have core hours but work additional hours as required. Since the definition is not entirely clear, employers would be advised to make the position clear by agreement.

A salaried partner, although a 'worker', may well be exempt under this head since he/she will not normally have core hours.

Collective and workforce agreements

The Regulations allow employers to modify or exclude the rules relating to night work, daily and weekly rest periods and rest breaks and extend the reference period in relation to the 48-hour week – *but not the 48-hour week itself* – by way of agreement as follows:

- a collective agreement between an independent trade union and the employer (or an employers' association);
- a workforce agreement with representatives of the relevant workforce *or if there are 20 workers or fewer the agreement may be with a majority of the workforce which obviates the need to elect worker representatives*. As regards worker representatives, these may be representatives elected for other purposes, e.g. health and safety consultation;
- for, e.g., technical reasons or reasons concerning the organisation of work the 17-week averaging period may be extended by up to 52 weeks by a collective workforce agreement;
- individuals may also choose to agree with their employer to work in excess of the 48-hour weekly time limit. *This is all that an individual agreement can cover*;
- this individual agreement must be in writing and must allow the worker to bring the agreement to an end. The agreement may specify a notice period of up to three months and if no period of notice is specified, only seven days' notice by the employee is required. The worker must give written notice to the employer;
- in addition, a workforce agreement may apply to the whole of the workforce or to a group of workers within it.

These agreements can only last for a maximum of five years before renewal.

Records

In outline the position is as follows:

- An employer must keep adequate records to show that he has complied with the weekly working time limit. The records must be kept for two years. It is up to the employer to determine what records must be kept. Pay records may adequately demonstrate a worker's working hours.
- Similar provisions apply in regard to records showing that the limits on night work are being complied with. Records need not be kept in regard to rest periods and in-work rest breaks nor in regard to paid annual leave.

- Amendments have been made to the record keeping requirements to relieve the burden on business (see SI 1999/3372 in force 17 December 1999). The amending Regulations:
  - remove the need to keep records for staff who have opted out. (Formerly, where a worker had agreed to work in excess of the 48-hour weekly working limit, the employer was required to keep records of the number of hours that the worker had worked.);
  - provide that *unpaid* time which workers have agreed to work over and above their contracted hours are disregarded in terms of records.

Compensatory rest

Employers who make use of the derogations or who enter into collective or workforce agreements must provide an equivalent period of rest or, if this is not possible, give appropriate health and safety protection. Thus the Regulations allow, through agreement, flexibility in the way its rights are delivered, but they do not allow those rights to be totally avoided.

Health and safety assessments

An employer must offer a free health assessment to any worker who is to become a night worker. Employers must also give night workers the opportunity to have further assessments at regular intervals.

Young (or adolescent) workers

The Regulations also apply rights to persons over the minimum school-leaving age but under 18.

The Regulations have been amended by the Working Time (Amendment) Regulations 2002 (SI 2002/3128) that came into force on 6 April 2003. The position under the WTR as amended is as follows:

- *weekly working hours* are limited to 40;
- there is a *prohibition on night work* between 10 pm and 6 am or 11 pm and 7 am;
- *daily working time* is limited to eight hours;
- *health assessments for night workers*: adolescent workers are entitled to a health and capacity assessment if they work during the period 10 pm to 6 am. Such an assessment for an adolescent worker differs in that it considers issues like physique, maturity and experience and takes into account the competence to undertake the night work that has been assigned;
- *weekly rest*: for young workers the general requirement is two days off per week;
- *in-work rest breaks*: for young workers the general provision is 30 minutes if the working day is longer than $4^1/_2$ hours;
- *paid annual leave*: adult and young workers are treated the same.

The restrictions are subject to various exceptions relating to particular occupations and circumstances, e.g. hospitals, agriculture, retail trading and hotel and catering work (but not in restaurants and bars), bakeries, postal and newspaper deliveries subject to certain conditions, e.g. compensatory rest. Young workers in the seafaring and sea fishing industries and the armed forces are excluded from the provisions.

Other young workers rules

SI 2000/2548, reg 2 limits the number of hours a child of school age can work – in any week during which he or she is required to attend school – to 12.

Enforcement and remedies

The weekly working time limit, the night work limit and health assessments for night workers are enforced by the Health and Safety Executive or local authority environmental health officers. The usual criminal penalties for breach of the health and safety law apply. In addition, workers who are not allowed to exercise their rights under the Regulations or who are dismissed or subjected to a detriment – whether a pay cut, demotion or disciplinary action – for doing so will be entitled to present a complaint to an employment tribunal. In view of the abolition on the ceiling of awards for unfair dismissal, employment tribunal claims could be much more expensive than health and safety fines.

The following case gives an example of a situation which gave rise to a claim. In *Brown* v *Controlled Packaging Services* (1999) unreported, a fork-lift truck driver was told when interviewed for a job that he would have to work overtime on occasions. On commencing work, he discovered that the amount of overtime he was expected to do conflicted with an evening part-time job which he had. His manager indicated that his services were not required in the business if he did not sign the opting-out agreement. Mr Brown took this as a dismissal and left. He later claimed unfair dismissal and the tribunal ruled that the main reason for the dismissal was his refusal to sign the agreement and that his dismissal was automatically unfair.

Pay

In business organisations the duty of the employer to pay his employees and the rate or amount of pay is decided as follows: (a) by the contract of employment; or (b) by the terms of what is called a collective agreement made between a trade union and the employer. The terms of this agreement, including the part on pay, are then assumed to be part of the individual contracts of employment of the members. The employer must also comply with the National Minimum Wage Act 1998 (see below).

The pay which the worker is to get should nearly always be definite because it is included in the written particulars, which we have just dealt with, and also because the ERA requires itemised pay statements.

Itemised pay statements

Under the ERA, an employee is entitled to an itemised pay statement, containing the gross amount for wages or salary; the amounts of any variable and fixed deductions and the reasons for them; and the net amount of wages or salary payable. As only gross and net amounts and deductions are required, it is apparently unnecessary for workers to be informed as to details of their basic rates, overtime payments or shift premiums. The fixed deductions can be aggregated so long as the employee is issued with a statement of fixed deductions which is reissued every 12 months, and he is notified of any alterations when they are made. If an employee does not receive a pay statement or if he receives one that is inadequate, he may refer the matter to an employment tribunal. The employment tribunal will make a declaration which will include answers to questions relating to the employer's failure to give particulars or his failure to give accurate amounts. The declaration then determines these matters. Where there have been unnotified deductions from pay during the previous 13 weeks, the tribunal may order the employer to pay to the employee a sum not exceeding the total unnotified deductions. It can do this even where the employer was entitled to make the deductions under the terms of the contract.

The compensation is intended to act as a penalty on the employer for non-compliance and it is payable even where the employer has accounted for the sums deducted to the Inland Revenue and therefore ends up paying twice (*Cambiero* v *Aldo Zilli & Sheenwalk Ltd t/a Signor Zilli's Bar*) (1998) 586 IRLB 11).

If the particulars are complete and in accordance with the law but the employee wishes to question the *accuracy* of the amounts deducted, this is a matter for the county court though it can be dealt with by an employment tribunal if the employee has left work.

Contractual sick pay

There is no presumption that a contract of employment contains an implied term that sick pay will be paid.

> *Mears* v *Safecar Security*, 1982 – No presumption about sick pay (**251**) 

Statutory sick pay

Employers are required to provide what is called *statutory sick pay* (SSP) on behalf of the government. It is not necessary in a book of this nature to go into detail in regard to the scheme but the main principles are that when an employee falls sick he or she gets a weekly amount from the employer and not from the Department of Social Security. As regards reimbursement of employers who have paid SSP, there is now no distinction between small employers whose annual National Insurance Contributions bills do not exceed £45,000 and other employers. Under the Statutory Sick Pay Percentage Threshold Order 1995 (SI 1995/512) all employers recover SSP on the 'percentage threshold scheme'. This works as follows: the employer takes the figure of NIC (employer's and employee's contributions) paid in any given tax month. The employer then finds out the SSP paid in that same month. If this is more than 13 per cent of the NIC figure he recovers the excess.

SSP can go on for 28 weeks and since the vast majority of employees are not sick for anything like as long as this, employee sickness benefit is, in effect, now paid by the employer. It is not possible to avoid the SSP provisions and any clause in a contract of employment which sets out to do this is void.

The current single rate of SSP is £70.05. The amount is reviewed annually.

Exceptions

There are some exceptions. Examples are:

- employees over pension age, though women who continue to work between the ages of 60 and 65 are eligible for SSP;
- persons employed for a fixed period of not more than three months unless the contract is extended beyond three months;
- an employee whose average weekly earnings are less than the lower earnings limit (currently £84 a week) is not entitled to SSP but there is no service requirement.

The national minimum wage

The National Minimum Wage Act 1998 received the Royal Assent on 31 July 1998. It is in part an enabling Act and its order- and Regulation-making powers came into force on 31 July. Remaining provisions were in force by 1 April 1999 (see SI 1998/2574). This section combines

the main provisions of the Act with those of Regulations so far issued under it. Section references are to the 1998 Act, unless otherwise indicated.

The Act provides workers with a floor below which their wages will not fall, regardless of the size of the employer's business. Those who work part time will benefit most.

Entitlement

Those entitled must be 'workers' who work or ordinarily work in the UK under a contract of employment and are over compulsory school leaving age (ss 1(2) and 54(3)). Casual workers are included, as are agency workers (s 34) and home-workers (s 35).

Regulations may exclude any age group below 26 and prescribe different rates for different age groups below 26 (s 3). The self-employed are excluded, when providing services to a client or business customer, and there are other exclusions in ss 43–45, e.g. voluntary workers defined in s 44. These include charity workers, who are e.g. either unpaid or receive only reasonable travel and out-of-pocket expenses.

Also excluded are au pairs and nannies and companions who are treated as a member of their employer's family with free accommodation and meals.

Owner-managed businesses

The 1998 Act applies to directors of owner-managed businesses. Thus, a person who works as a director of his company, but takes no salary (or very little) *relying on dividends* as income, falls foul of the Act and must receive the minimum wage. The same is true of directors *who receive nothing* in the first months of the new company's life. The alternative is to remain a creditor and pay when the company can afford to do so.

A further solution for directors is not to have a contract of employment so that they are not employees. This is accepted by the National Minimum Wage Office (part of HM Revenue and Customs (HMRC)) which is the enforcing agency and by the Department of Trade and Industry which has confirmed that it will not challenge such an arrangement on the basis that the director has an *implied* contract of employment.

Level

The levels of the NMW are currently as follows:

- adult minimum wage £5.35;
- rate for age 18 to 21 £4.45;
- rate for age 16 to 17 £3.30.

The above are hourly rates.

Increases in level

This depends upon the advice of the Low Pay Commission (LPC) and the economic situation, and is not automatic.

Extensions

There is power to apply the Act to those who do not fit the current definition of a 'worker' (s 41). This could be used to deal with changes in working practices and to close loopholes which bad employers may exploit.

Calculation

The Regulations set out the averaging period to be used in calculating whether a worker has been paid the NMW. It is set at a month (i.e. a 'calendar month') except where workers are

currently paid by reference to periods of shorter than one month, e.g. a week, a fortnight or four weeks. In the latter cases, the pay reference period for NMW purposes will be the worker's existing pay period. In addition, the hourly rate for those who are paid annual salary will be calculated on an average basis. Therefore, the lowest salary for a 35-hour week would be: the current rate per hour × 35 × 52.

What counts as remuneration?

The Regulations deal with a number of instances of what does and does not count towards discharging an employer's obligation to pay the NMW. Examples of things which do not count are advances of wages, pensions, redundancy payments and benefits in kind. However, deductions are allowed where the employer provides accommodation, but only up to a fairly low limit.

Service charges, tips, gratuities or cover charges *not paid through the payroll* are not included. Tips pooled under an employees' informal scheme and distributed are not included. However, where tips are pooled by the employer and paid through the payroll, they do count as remuneration.

Basically tips given in cash to the worker belong to him or her and do not count towards NMW. Where the workers pool the tips and distribute them themselves the tips belong to the workers and do not count. Additions to the bill where payment of the whole account is made to the employer then this is his or her money and can be used to pay the basic wage and is not an addition to it (see *Nerva* v *UK* [2002] IRLR 815).

Enforcement

The Secretary of State appoints enforcement officers (s 13) and HM Revenue and Customs is responsible for enforcement by checking employers' records to ensure compliance. Complaints by employees will be investigated and spot checks will be made on employers.

The National Minimum Wage (Enforcement Notices) Act 2003

This Act ensures that the Inland Revenue can issue enforcement notices to require the payment of the NMW to *former* employees as well as current employees. The Act closes a loophole that was revealed by the decision of the EAT in *IRC* v *Bebb Travel plc* [2002] 4 All ER 534. In the *Bebb* case the EAT ruled that under s 19(2) of the National Minimum Wage Act 1998 an enforcement notice could be issued in regard to a previous failure to pay the NMW if the notice also contained a requirement that the employer pay the NMW *in the future*. Thus former employees could not claim merely for past failures to pay. The 2003 Act adds s 19(2A) to the 1998 Act which allows the service of an enforcement notice where it is of opinion that a worker who qualifies has 'at any time' not received the minimum wage. The 2003 Act is retrospective. Workers may bring claims under it to an employment tribunal, a county court or through HMRC's enforcement unit.

In this connection, enforcement officers can disclose information obtained from the employer to the worker and similarly disclose information obtained from the worker to the employer. Enforcement notices can be withdrawn or replaced as can penalty notices.

Organisations that refuse to pay the NMW will face daily fines of twice the NMW for each employee (s 21). If defiance continues, the fine goes up to a maximum of £5,000 for each offence (s 31). Workers have the right to recover the difference between what they have been paid and the NMW before a tribunal as an unlawful deduction from wages (s 17). There is no limit of time on back claims.

Access to tax records

The inspectors required to enforce the NMW have access through the Inland Revenue to relevant tax records.

Records

The record-keeping obligations were eased following consultation and it is now merely provided that an employer has to keep records 'sufficient to establish that he is remunerating the worker at a rate at least equal to the national minimum wage'. The records may be in a format and with a content of the employer's choosing and must be capable of being produced as a single document when requested either by an employee or the Inland Revenue. The DTI publishes guidance on the kinds of records that will be regarded as sufficient.

Corporate offences

Where a relevant offence is committed by a company, its directors and other officers are jointly responsible with the company where they have consented to or connived at the offence or been neglectful in regard to it (s 32).

Contracting out

Section 29 makes void any agreement to exclude or limit the Act's provisions or to prevent a complaint from being made to a tribunal, unless there has been conciliation by a conciliation officer or a valid compromise agreement.

Victimisation and unfair dismissal

Section 23 gives workers the right not to be subject to any detriment e.g. failure to promote because they have asserted rights under the 1998 Act. Under s 25, employees who are dismissed or selected for redundancy for similarly asserting rights will be regarded as automatically unfairly dismissed so that a complaint may be made to a tribunal even by those who do not have one year's service.

Low Pay Commission

The government has asked the Low Pay Commission, which was put on to a statutory footing when ss 5–8 of the National Minimum Wage Act 1998 came into force on 1 November 1998, to report on a number of matters e.g. to monitor and evaluate the impact of the NMW in terms of pay, employment and competitiveness in low-paying sectors and small businesses, and the effect on pay differentials.

Method of payment and deductions from pay

Employees no longer have a right to be paid in cash. The matter is now left to be decided by the contract of employment. The Truck Acts 1831–1940, which used to give this right, have been repealed. Payment may still, of course, be made in cash, but an employer can if he wishes pay the employee, for example, by cheque or by crediting the employee's bank account. It should be noted, however, that if a worker was paid in cash before 1986 when the new provisions came into force, the method of payment may only be changed if the worker agrees to a variation of the contract of service.

Under Part II (ss 13–17) of the ERA deductions from pay are unlawful unless they are (*a*) authorised by Act of Parliament, such as income tax and National Insurance deductions; or (*b*) contained in a written contract of employment, or the worker has signed a written statement containing his agreement or consent to the making of them. Such a statement is

ineffective if made *after* the need to make the deductions arises. Once there are shortages, the employee is under much more pressure to sign a document to agree to make them good in order to save his job, even though he might not be responsible for them. This was decided in *Discount Tobacco and Confectionery Ltd* v *Williamson* [1993] IRLR 327. As regards (*b*), deductions from the wages of workers in the retail trade, e.g. petrol station cashiers, for stock and cash shortages are limited to 10 per cent of the gross wages and deduction may be made on any pay day, but only in respect of shortages within the period of 12 months from the date when the employer knew or ought to have known of the shortage. Deductions may be made by instalments and no limit is placed on the amount which may be deducted from a final pay packet when employment is terminated. These provisions are enforceable by the employee against the employer exclusively in employment tribunals (see *Franks Investment Management Ltd* v *Robertson* (1996) *The Times*, 12 November).

Equal treatment in terms and conditions of employment as between men and women in the same employment

The Equal Pay Act 1970, as amended, implies a term into men's and women's contracts of employment which requires equal treatment in terms of pay, holidays, sick pay and hours of work.

The Equal Pay Act 1970 provides that all contracts of employment are regarded as containing an equality clause which operates on pay when a woman is employed on 'like work' or on work 'rated as equivalent' to that of a man, e.g. by a job evaluation study.

Under the Equal Pay (Amendment) Regulations 1983, there is a further instance when equality is to have effect, i.e. where a woman is employed on work which is, in terms of the demands made on her, for instance under such headings as effort, skill and 'decision', of equal value to that of a man in the same employment. In addition, under the Regulations a complaint may go before an employment tribunal, even if the two jobs under comparison have already been shown to be unequal in a job evaluation study. However, the tribunal must find the study unsatisfactory either on the grounds of sex bias or other grounds.

Even if the two jobs are wholly dissimilar a claim may be made if the jobs are of 'equal value'. A case in point is *British Coal Corporation* v *Smith* [1996] 3 All ER 97 where women canteen workers and cleaners employed in the coal industry claimed that their work was of equal value to that of surface mineworkers and, in some cases, clerical workers employed at their own and at separate workplaces. The House of Lords decided that the women could use the above categories of worker as comparators. It was a matter for a court or tribunal to decide what was a relevant class of employees.

In addition, under directly applicable EC law (i.e. Art 141 of the Treaty of Rome), a person may rely on a successor to the post as a comparator as in *Hallam Diocese Trustee* v *Connaughton* [1996] IRLR 505 or a predecessor as in *Macarthys* v *Smith* [1980] ICR 672.

The Act applies to all forms of full-time and part-time work. There are no exemptions for small firms or in respect of people who have only recently taken up the employment, although the Act does not apply, for example, to those who work wholly outside Great Britain. Both the complainant and the comparator must be employed at an establishment or establishments in Great Britain. The Act also applies to pay discrimination against men but in practice claims have usually been made by women.

The comparison is with the pay of a comparator of the opposite sex and in the case of part-timers with part-time comparators. The 1970 Act is not concerned with fair wages generally but only between those of opposite sex. Thus, for a woman a male comparator is required, and vice versa.

Equal pay questionnaires

Under s 7B of the Equal Pay Act 1970 (as inserted by s 42 of the Employment Act 2002) an employee who believes that she/he may not be receiving equal pay can use a questionnaire to request key information from the employer when deciding whether to bring an equal pay claim. If it is decided to go to a tribunal the information elicited from the employer will be admissible as evidence and will help the complainant to formulate and present the case. A tribunal will be able to draw inferences from a deliberate refusal to answer or from an evasive reply. This includes an inference that the employer is contravening the implied equality clause in the employee's contract. While it is not necessary for the employer to reveal the names of persons on higher pay but only pay there are those in industry who feel that, particularly in the smaller organisation, it will be possible to make identification so that the employer may be in breach of confidence by revealing salaries of other employees though an employer should have a good defence because he or she is carrying out a statutory requirement.

Under the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2004 (SI 2004/2351), a tribunal may order an employer to grant access to his or her premises to an expert where one has been appointed by the tribunal or to the claimant or his or her representative in order to question certain employees, e.g. alleged comparators.

Non-employees

Rights are given to persons who are not employees in the ordinary sense. The EPA definition includes persons who work under a contract to execute any work or labour, e.g. those who provide consultancy services under a contract for services.

Effect of successful claim

The complainant has a contractual right to the higher pay and/or the other contract terms enjoyed by the comparator. The tribunal can also award compensation in respect of the disparity.

Time limits

The Equal Pay Act 1970 (Amendment) Regulations 2003 (SI 2003/1656) apply and affirm the law laid down by the ECJ in *Levez* v *TH Jennings (Harlow Pools) Ltd* [1999] IRLR 36 and *Preston* v *Wolverhampton Healthcare NHS Trust* [2000] IRLR 506 by making appropriate amendments to the Equal Pay Act 1970. The time limit for bringing a claim is six months after the claimant was employed in the employment. However, where there is a succession of contracts at regular intervals forming part of a stable employment relationship the period of six months runs from the end of the last such contract. As regards compensation, the limit now relates to a six-year period before the date on which the proceedings were commenced.

Part-time workers

The *Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000*, which came into force on 1 July 2000, and are not retrospective, enable part-timers to claim equal treatment without the need to prove sex discrimination.

A part-time worker will not normally be able to use a full-time worker as a comparator where it is the *job* that gives rise to the different conditions and not *gender* (*Lynn* v *Rokeby School Board of Governors* [2001] All ER (D) 440 (Mar)).

Pensions

The matter of equality in pension rights exists but is dealt with by the Pensions Act 1995 and supporting Regulations.

Sections 62–66 require all occupational pensions schemes to provide equal treatment for men and women with regard to:

- the terms on which they become members of the scheme; and
- the terms on which members are treated in relation to any pensionable service.

Equality in this context means that claims for pension rights must be made within six months of leaving service or where there is a series of contracts forming a stable employment relationship six months from the end of the last contract. Service for pension entitlement may be calculated for service back to 8 April 1976 if there has been a stable employment relationship for that period of time and the claim has been brought in time. The date of 8 April 1976 is based upon the date of the ECJ decision in Case 149/77 *Defrenne* v *Sabena* [1978] ECR 1365 that decided pensions were pay for the purposes of EU law and *Barber* v *Guardian Royal Exchange Assurance Group* [1990] 2 All ER 660 which decided that equality clauses must be implied in pension schemes.

Community law

A claim can be brought under UK legislation only if the complainant and the comparator are or have been employed at the same time. However, any gaps or exceptions in UK legislation can be overridden by Community law. Article 141 of the Treaty of Rome establishes the principle that men and women are entitled to equal pay for work of equal value. As we have seen the EAT ruled that an employment tribunal could hear a claim for equal pay under what is now Art 141 where the applicant relied on a male comparator appointed *after* her resignation (see *Hallam Diocese Trustee* v *Connaughton* [1996] IRLR 505). In *Macarthys* v *Smith* [1980] ICR 672 the ECJ ruled that the complainant's *predecessor* was a valid comparator.

The above rulings on the basis of EC law provide good examples of the effect of European rulings on English law, in this area.

Employer's defences

One obvious defence is that the two jobs cannot be regarded as being 'like work'. Equal value is more difficult but here there may be resort to a job evaluation exercise to resolve the matter. The employer will not normally be able to argue the defence that the woman and the comparator are not in the same employment, where associated employers are included so that employees can find comparators in a holding company or a fellow subsidiary in a group situation. The material factor defence is more difficult and examples appear in the case law and comment that follows.

Capper Pass v *Lawton*, 1976 – An equal pay claim succeeds (252)
Navy, Army and Air Force Institutes v *Varley*, 1977 – An equal pay claim fails (253)

Part-time workers

The Part-time Employees (Prevention of Less Favourable Treatment) Regulations 2000 came into force on 1 July 2000 with the object of further extending the rights of part-time workers.

Although the rights of part-time employees have been extended in recent years so that, for example, claims for unfair dismissal can be brought by part-timers with one year's service, their rights are not the same in some remaining areas. The Regulations are intended to put this right. The provisions are set out below:

- ***Pay***. Part-time employees should receive the same hourly rate of pay as comparable full-time workers. A lower rate may be justified on objective grounds as where, e.g., there is performance-related pay.
- ***Overtime***. Part-time employees should receive the same hourly rate of overtime pay as comparable full-time employees once they have worked more than the full-time hours.
- ***Contractual sick pay and maternity pay***. Part-time employees should not be treated less favourably than full-time employees in terms of the rate of contractual sick pay or maternity pay; the length of service required to qualify for payment and the length of time the payment is received. The benefits which a part-timer will receive are to be pro rata which means that where a comparable full-time employee receives or is entitled to receive pay or any other benefit a part-time employee is to receive or be entitled to receive not less than the proportion of that pay or other benefit that the number of his weekly hours bears to the number of weekly hours of the comparable full-time employee.
- ***Occupational pensions***. 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.
- ***Access to training***. Employers should not exclude part-time staff from training simply because they work part-time.
- ***Leave/holiday/breaks: annual leave, maternity, adoption and parental leave, career breaks***. The contractual holiday entitlement of part-time staff should be pro rata to that of full-time employees. Contractual maternity leave, adoption 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 employees, unless their exclusion is objectively justified on grounds other than their part-time status.
- ***Redundancy***. 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 workers in regard to selection for redundancy.

The Regulations cover not only workers but extend also to homeworkers and agency workers. In the case of homeworkers, they will have to find a comparator which may not be easy. Full-time workers who switch to part-time work can make a comparison with the benefits provided in their full-time contract. This may assist women wishing to convert to part-time work after maternity leave, though some employers may regard this as a further burden. It may, therefore, be counter-productive. A worker's request to the employer for change must be made in writing and the employer has 21 days to respond before a claim is made to an employment tribunal. This is intended to produce a reconciliation of the position. If not, a claim may be made to an employment tribunal within three months of the act of discrimination. This time scale does not seem to matter since failure to comply with the requirement to up-rate conditions in relation to a full-time comparator is a continuing