

# Employment contract for a senior employee

by Practical Law Employment

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An employment contract (or service agreement) suitable for a senior employee or executive. For a list of additional standard clauses which may be used with this document (including [director clauses](#) to include in directors' service agreements), see [Additional standard clauses: contracts of employment](#). For a version of the contract that includes most of the additional clauses, see [Standard document, Director's service agreement](#).

For a senior employee contract governed by Scots law, see [Standard document, Employment contract for a senior employee \(Scotland\)](#).

## GENERAL DOCUMENT NOTES

This employment contract is appropriate for a senior employee or executive and is more complex than the [Standard document, Employment contract for a junior employee](#).

For a list of additional optional standard clauses that can be used with this document, see [Additional standard clauses: contracts of employment](#). If any additional clauses are added to the contract, check whether any of the clause cross-references need to be amended.

### Creating a service agreement for a director

The document can also be used as the basis of a service agreement for an employee who is an executive director, if [Standard clauses, Director clauses \(private and listed companies\)](#) are added.

For a detailed director's service agreement combining this standard document, the director clauses and other [Additional standard clauses](#) in a single document, see [Standard document, Director's service agreement](#).

### Do not use this agreement for a non-executive director or chairperson

This agreement is **not** appropriate for a non-executive director. Use [Standard document, Letter of appointment for a non-executive director](#) instead.

For a non-executive chairperson, use [Standard document, Letter of appointment for a non-executive chairperson: financial years beginning on or after 1 January 2019](#).

## Legal issues

### Section 1 statement of terms

By virtue of section 1 to section 3 of the Employment Rights Act 1996 (ERA 1996), employers are generally obliged to provide employees with a written statement of certain terms of their employment. This statement is often referred to as the "written particulars" or "section 1 statement". In the case of employees who started work before 6 April 2020, it must be given no later than two months after the beginning of employment to all employees whose employment is to last for more than one month. For employees beginning work on or after 6 April 2020, it must be given on or before the start date (that is, it is a "day 1 right"), no matter how long the employment is intended to continue.

This standard document complies with the requirements of a section 1 statement. The drafting notes indicate which clauses must be included for those starting work on or after 6 April 2020 (and which are not mandatory for existing employees as at that date). For the minimum terms that must be included in a section 1 statement, see [Practice note, Section 1 statements](#). For full details of the other

changes to section 1 statements that came into force on 6 April 2020 as a result of the Good Work Plan, see [Standard document, Section 1 statement \(employee\): Drafting note: Changes from 6 April 2020 and Section 1 statement compliance for employers: checklist](#).

To comply with section 1 of the ERA 1996, where there are no particulars relating to a particular matter, this must be explicitly stated (section 2(1), *ERA 1996*).

It is worth noting that the Good Work Plan explained that the reason for expanding the information to be provided to employees in a statement, and for it to be provided at the outset of the relationship, was to ensure that the statement is “as useful as possible to both the individual and the employer” and allows the individual “to make informed choices” (*page 31, Good Work Plan*).

While senior employees were not necessarily the target of these changes, any employment contract for such an employee should be clear and easily understood by them.

### Contract in writing

There is no legal requirement for a contract of employment to be in writing, and the section 1 statement (see above) need not be a contract in itself, although it may be used as evidence of the terms of the contract. In practice, most employers require senior employees including executive directors to sign a written contract, and it is usual for that contract to serve as a section 1 statement.

### Requirement for a deed?

The employment contract will need to be executed as a deed, with the appropriate introductory wording and testimonium at the end, if it contains a power of attorney. For more information, see [Drafting note, Execution](#).

### Drafting issues

For a list of additional clauses for employment contracts, see [Additional standard clauses: contracts of employment](#).

Common clauses that you may wish to consider:

- **Pay and benefits** (see [Additional standard clauses: contracts of employment: Pay and benefits](#)):
  - Various types of bonus scheme.
  - Car or car allowance.
  - Health insurance, life assurance and medical cover.
  - Different types of pension scheme.

Alternatively, use FastDraft to create an automatic first draft of your agreement using the clauses of your choice by answering a few short questions.

Note also that this standard document does not refer to any particular share plan entitlements the employee may have. For more information, including the reasons why it may not be advisable to refer to share plans in an employment contract, see [Practice note, Referring to share plans in employment offers and contracts](#).

### Alternative agreement available for use in Scotland

For an agreement appropriate for use in Scotland, governed by Scots law and subject to Scottish drafting conventions, see [Standard document, Employment contract for a senior employee \(Scotland\)](#).

### Negotiating issues

Employment contracts are generally drafted by the employer for the employer’s protection, and this document is therefore pro-employer. It may be appropriate to suggest that the employee gets independent legal advice on the terms of the agreement. If acting for the employee, see [Practice note, Acting for an employee entering into an employment contract](#).

This [agreement OR deed] is dated [DATE]

PARTIES

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### PARTIES

It has been assumed that the employer is a company. This can be modified as necessary

if the employer is an individual, a partnership or an LLP.

(1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Company / we / us**)

(2) [EMPLOYEE'S NAME] of [ADDRESS] (**Employee / you**)

AGREED TERMS

#### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this Clause 1 apply in this agreement.

**Appointment:** your employment by us on the terms of this agreement.

**Associated Employer:** has the meaning given to it in the Employment Rights Act 1996.

**Board:** the board of directors of the Company (including any committee of the board duly appointed by it).

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**[Capacity:** as agent, consultant, director, employee, worker, owner, partner or shareholder.]

### CAPACITY (OPTIONAL DEFINITION)

The definition of "Capacity" must be included if the optional Clause 20 is included.

**Commencement Date:** [DATE OF COMMENCEMENT OF EMPLOYMENT].

### COMMENCEMENT DATE

This should be the date on which the employment commences and not the date on which the contract is signed. If there is not a separate section 1 statement (which will usually be the case for a senior employee), the company will need to ensure the

contract is given to the employee no later than two months after the commencement date (section 1(2), *ERA 1996*). For those starting employment on or after 6 April 2020, the contract must be given on or before the first day of employment; see Drafting note, Section 1 statement of terms and [Standard document, Section 1 statement \(employee\): Drafting note: Changes from 6 April 2020](#).

**Confidential Information:** information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to [our **OR** any Group Company's] business, products, affairs and finances for the time being confidential to [us **OR** any Group Company] and trade secrets including, without limitation, technical data and know-how relating to [our **OR** any Group Company's] business or any of [our **OR** its] business contacts, including in particular (by way of illustration only and without limitation) [EXAMPLES].

### CONFIDENTIAL INFORMATION

The company's specific instructions should be sought regarding the nature of its business

and the type of information that it considers to be confidential. The definition should then be amended as appropriate. See Clause 14.

**Garden Leave:** any period during which we have exercised our rights under Clause 18.

**[Group Company:** the Company, its Subsidiaries or Holding Companies from time to time and any Subsidiary of any Holding Company from time to time.]

### GROUP COMPANY (OPTIONAL DEFINITION)

Only include this if the employer is a company. A number of clauses contain optional wording such as "[the Company **OR** any Group Company]" and may need to be amended as appropriate.

Even if the company is not part of a group at the time the contract is entered into, it may be worth

including the optional wording in case of future restructuring, as it may affect the scope of the employee's duties and the enforceability of any restrictive covenants.

**Incapacity:** any sickness, injury or other medical disorder or condition which prevents you from carrying out your duties.

**[Intellectual Property Rights:** patents, rights to Inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.]

### INTELLECTUAL PROPERTY RIGHTS (OPTIONAL DEFINITION)

This definition of intellectual property rights is as wide as possible to minimise the risk of a successful ownership claim by the employee.

The definition covers all the common forms of intellectual property which can arise under UK law. However, there are some rights which arise only in other jurisdictions (such as rights in utility models in the US). If it is intended that the employee should work for non-UK entities as part of their employment,

this definition may need to include other such rights, as appropriate. For more information, see:

- [Practice note, Intellectual property issues relating to employees and consultants.](#)
- [Standard clause, Definition of intellectual property rights.](#)
- [Drafting note, Definition of intellectual property rights.](#)

**[Inventions:** inventions, ideas and improvements, whether or not patentable, and whether or not recorded in any medium.]

**[Restricted Business:** those parts of [our **OR** any Group Company's] business with which you were involved to a material extent in the [PERIOD] months before Termination.]

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[**Restricted Customer:** any firm, company or person who, during the [PERIOD] months before Termination, was [a customer or prospective customer of **OR** was in the habit of dealing with] [the Company **OR** any Group Company] with whom you had contact [or about whom you became aware or informed] in the course of your employment.]

[**Restricted Person:** anyone employed [or engaged] by [us **OR** any Group Company] [at the level of [POSITION] or above and who could materially damage [our **OR** any Group Company's] interests if they were involved in any Capacity in any business concern which competes with any Restricted Business] and with whom you dealt in the [PERIOD] months before Termination in the course of your employment.]

### RESTRICTIVE COVENANTS (OPTIONAL DEFINITION)

Definitions of "Restricted Business", "Restricted Customer" and "Restricted Person" must be included if the optional Clause 20 is included.

**SSP:** statutory sick pay.

**Staff Handbook:** our staff handbook as amended from time to time.

[**Subsidiary and Holding Company:** in relation to a company mean "subsidiary" and "holding company" as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) a nominee].]

[Termination: the termination of your employment with us howsoever caused.]

### TERMINATION "HOWEVER CAUSED" (OPTIONAL DEFINITION)

This definition is used in the optional restrictive covenants (Clause 20). It can be removed if this clause is not used.

For further information on "however caused" in the context of restrictive covenants, see

[Standard clauses](#), [Restrictive covenant clauses](#), and in particular the [Drafting note](#), [Termination "howsoever caused"](#).

- 1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.5 [The schedules to this agreement form part of (and are incorporated into) this agreement.]

### SCHEDULES (OPTIONAL SUB-CLAUSE)

Remove this wording if the agreement has no schedule.

### 2. TERM OF APPOINTMENT

#### TERM OF APPOINTMENT

If the standard document is to be signed after the employee has started work, this clause should specify that the agreement is deemed to have commenced on the date that the employment actually started.

The document is drafted on the basis of an indefinite term contract and both parties are required to give the same period of notice (see [Standard clauses](#), [Fixed-term employees clauses](#) for other options regarding duration). There is no provision for statutory minimum notice to apply as it would be unusual to engage a senior employee on that basis (for further information see [Standard document, Employment contract for a junior employee, Termination and Notice Period](#)). Equally, in practice, a long notice period has few advantages for an

employer as it has a direct relationship with the payment that will have to be made to the employee on termination if the employer does not want the employee to work out their notice period. All that is needed is a sufficient period to enable the employer to protect its business interests and replace (and possibly train) a new employee. It is stated that notice must be given in writing. The company should be advised that if this provision is included, oral notice will not be effective.

Furthermore, a notice period or fixed term of more than two years in a director's service contract entered into since 1 October 2007 is unlawful under section 188 of the Companies Act 2006 unless previously approved by shareholders, and the contract will be terminable on reasonable notice (see [Standard clause, Director clauses \(private, listed and AIM companies\): Drafting note: Legal issues](#)).

#### NO FIXED RETIREMENT AGE

Compulsory retirement amounts to a form of unlawful direct age discrimination unless the employer can show that it is objectively justified (sections 14 and 39(2)(c), *Equality Act 2010* (EqA 2010)). (For further information, see [Practice note, Discrimination in employment: retirement](#).)

Retirement clauses should not be used without careful consideration of whether they are justified for the role in question. If a retirement clause can be justified, appropriate wording together with drafting notes explaining its use can be added as an additional clause (see [Standard clause, Retirement clause](#)).

2.1 The Appointment shall [commence **OR** be deemed to have commenced] on the Commencement Date and shall continue, subject to the remaining terms of this agreement, until terminated by either party giving the other not less than [NUMBER] [months' **OR** weeks'] prior notice in writing.

2.2 [No probationary period applies to your employment.]

#### OR

The first [NUMBER] [month[s] of the Appointment shall be a probationary period and the Appointment may be terminated during this period at any time on [one **OR** [NUMBER] week's] notice by either party or, in the case of the Company, payment in lieu of notice. We may, at our discretion, extend the probationary period for up to a further [NUMBER] months. During the probationary period your performance and suitability for continued employment will be monitored.]

2.3 [If you are absent from work due to incapacity during your probationary period for a period which exceeds [one **OR** [NUMBER] weeks] your probationary period will be extended by the period of your absence to allow adequate monitoring of performance.]

2.4 [At the end of the probationary period you will be informed in writing if you have successfully completed your probationary period. If you do not receive any written confirmation, you should assume that your probationary period continues.]

### PROBATIONARY PERIOD

As a result of the changes brought in by the Good Work Plan, for employees beginning work on or after 6 April 2020, the section 1 statement must contain particulars of any probationary period including any conditions and its duration. See [Standard document, Section 1 statement \(employee\): Drafting note: Changes from 6 April 2020](#).

Probationary periods are very useful for an employer, in particular where the employee's notice period exceeds the statutory minimum. Probationary periods may last, for instance, for three months, during which the employer may dismiss the employee at any time on minimal notice (usually one week) if their performance is unsatisfactory. Clause 2.2 provides for a probationary period during which the employee's contract can be terminated on shorter notice or payment in lieu. As it is common for notice periods to be reciprocal during the entirety of the employment relationship, we have provided for the employee to give a shorter period of notice, reflecting that of the employer, during the probationary period. A probationary clause will usually not be relevant where the document is being used for existing employees who, at the time of entering into the contract, have already completed the probationary period.

If no probationary period applies, this must also be explicitly stated in the contract (section 2(1), *ERA*

1996) and optional Clause 2.3 and Clause 2.4 will not be necessary.

The key conditions that we consider should be addressed in a probationary period clause in order to comply with the revisions to section 1 statements are regarding:

- Performance.
- Notice.
- Sickness absence.

However, employers should ensure all relevant conditions are included. The purpose of the changes to section 1 of the ERA 1996 as a result of the Good Work Plan is to provide clarity and certainty to employees.

Employers may also want to consider limiting the amount of holiday employees on probationary period can take at one time. For instance, one or even two weeks' holiday during a three-month probationary period may be considered a reasonable limit as any more than that could significantly shorten the probationary period giving the employer less time to assess the employee. The clause could also provide for the probationary period to be extended by the period of holiday taken if the employer wishes (similar to the sickness absence provision at optional Clause 2.3).

2.5 [No employment with a previous employer **OR** your employment with [NAME], which commenced on [DATE]] counts towards your period of continuous employment with us.

### CONTINUOUS EMPLOYMENT

This clause contains details of the date of the employee's deemed commencement of employment if employment with a previous employer is to count. This date is important

as it determines the employee's continuity of employment and is used when calculating various statutory rights, including the right to claim unfair dismissal and the right to a statutory redundancy payment. For further information, see [Practice note, Continuity of employment](#).

2.6 You consent to the transfer of your employment under this agreement to an Associated Employer at any time during the Appointment.

### INTRA-GROUP TRANSFERS

This clause allows the employer to transfer the employee to another company within its corporate

group without terminating the appointment or requiring the employee's specific consent at the time of the transfer. In such circumstances, the employee would retain the same terms of employment and

their continuity of employment would remain unbroken (section 218(6)(b), *ERA 1996*).

In some cases, where there is a restructuring within a corporate group, the employee would be transferred automatically under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (TUPE) (see [Practice note, TUPE:](#)

[overview](#)), but this clause avoids the need to show that the employee falls within the scope of a TUPE transfer.

See [Practice note, Secondment agreements](#) for relevant issues if the employer wants to reserve the right to second the employee (rather than transfer them permanently) within the group.

### 3. YOUR WARRANTIES

3.1 You represent and warrant to us that, by entering into this agreement or performing any of your obligations under it, you will not be in breach of any court order or any express or implied terms of any contract or other obligation binding on you [and undertake to indemnify us against any claims, costs, damages, liabilities or expenses which we may incur as a result if you are in breach of any such obligations].

#### FREEDOM TO WORK

This clause contains a warranty that the employee is free to enter into the employment contract.

See comments on this clause in [Standard clause, Warranty as to freedom to work clause: Drafting note: Legal issues](#).

3.2 You warrant that you are entitled to work in the UK without any additional approvals and will notify us immediately if you cease to be so entitled during the Appointment.

#### IMMIGRATION STATUS

This clause contains a warranty that the employee is entitled to work in the UK. It is advisable to have such a warranty in view of the fact that an employer will be liable to a civil penalty if it negligently employs someone who is not entitled to work in the UK and will commit a criminal offence if it knowingly employs such a person. An employer

will have a defence if it checks certain documents before employing the individual and (in some cases) at least every 12 months during employment (see [Practice note, Prevention of illegal working and establishing the right to work in the UK](#)).

Inclusion of the warranty at least puts some of the burden on to the employee (as the employee will be in breach of contract if they are not entitled to work in the UK).

### 4. DUTIES

4.1 You shall serve us as [JOB TITLE] [or such other role as we consider appropriate].

#### JOB TITLE AND ROLE

The job title or a brief description of the work for which the employee is employed is required by

section 1(4)(f) of the ERA 1996. It is advisable to draft the employee's duties and the job title as widely as possible to give the employer maximum flexibility. However, substantial variations to the employee's



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duties, or variations which require the employee to undertake duties which are not consistent with the employee's position within the organisation, are likely to require express consent.

For further information, see [Practice notes, Changing terms of employment: Interpreting existing terms and Implied terms in employment contracts: Duty to be adaptable](#).

### 4.2 During the Appointment you shall:

#### GENERAL DUTIES

This clause contains a list of the employee's general duties and obligations. For additional duties which

are applicable if the employee is a director, see [Standard clauses, Director clauses \(private and listed companies\)](#).

- (a) unless prevented by Incapacity, devote the whole of your time, attention and abilities to our business [and the business of any Group Company of which you are an officer or consultant];
- (b) diligently exercise such powers and perform such duties as [we **OR** the Board] may from time to time assign to you [together with such person or persons as [we **OR** the Board] may appoint to act jointly with you];

#### ACTING JOINTLY (OPTIONAL WORDING)

The optional wording at the end of this sub-clause seeks to avoid a claim for constructive dismissal

if the employer appoints someone to share the employee's responsibilities.

- (c) comply with all reasonable and lawful directions given to you by [us **OR** the Board];
- (d) promptly make such reports to [[POSITION] **OR** the Board] in connection with [our **OR** any Group Company's] affairs on such matters and at such times as are reasonably required;
- (e) report your own wrongdoing and any wrongdoing or proposed wrongdoing of any other employee or director of [the Company **OR** of any Group Company] to [[POSITION] **OR** the Board] immediately on becoming aware of it; and

#### DUTY TO REPORT WRONGDOING

This clause requires the employee to report their own wrongdoing as well as the wrongdoing of other employees. A senior employee may have a fiduciary duty to disclose their own misconduct

(see [Practice note, Implied terms in employment contracts: Duty to disclose wrongdoing](#)). However, it is not clear how senior an employee must be to attract this duty, or the type of misconduct that is covered. An express clause such as this is therefore advisable.

- (f) use your best endeavours to promote, protect, develop and extend our business [and the business of any Group Company].

4.3 You shall comply with our anti-corruption and bribery policy and related procedures at all times.

### BRIBERY ACT 2010

For an example of an anti-corruption and bribery policy, see [Standard document, Anti-corruption and](#)

[bribery policy](#). For further information on the Bribery Act 2010, see [Bribery Act 2010: toolkit](#).

4.4 We take a zero-tolerance approach to tax evasion. You must not engage in any form of facilitating tax evasion, whether under UK law or under the law of any foreign country. You must immediately report to [[POSITION] **OR** the Board] any request or demand from a third party to facilitate the evasion of tax or any concerns that such a request or demand may have been made. [You must at all times comply with our [anti-facilitation of tax evasion policy **OR** anti-corruption and bribery policy] [and [RELEVANT INDUSTRY CODE ON ANTI-FACILITATION OF TAX EVASION] [attached to this agreement at schedule [INSERT]]], [a copy of which has been given to you **OR** which is available from [POSITION] **OR** which is available on our intranet], [in each case] as [we] [or] [the relevant body] may update [them **OR** it] from time to time.]

### ANTI-FACILITATION OF TAX EVASION

The Criminal Finances Act 2017 (CFA 2017) contains corporate offences if a “relevant body” (that is, a corporate entity or partnership) fails to prevent facilitation of UK tax evasion or fails to prevent facilitation of overseas tax evasion, where an associated person (such as an employee or other person providing their services) commits a tax evasion facilitation offence. For information on the new offences, see [Practice note, Tax offences: failure to prevent facilitation of tax evasion](#).

These are strict liability offences. However, it is a defence for the relevant body to prove that it had in place such prevention procedures as were reasonable in all the circumstances, or that it was not reasonable in all the circumstances to expect it to have any prevention procedures in place. For more information, see [Practice note, Failure to prevent facilitation of tax evasion: proportionate procedures](#).

The CFA 2017 requires the Chancellor of the Exchequer to prepare and publish guidance about procedures that relevant bodies can put in place to prevent associated persons from committing tax evasion facilitation offences (*section 47 (1)*). HMRC has published such guidance (see HMRC: Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion). This states that a reasonable prevention procedure could include having terms in employment contracts and other contracts for services requiring

employees and others providing their services not to engage in the facilitation of tax evasion and to report any concerns immediately (*page 47*).

This clause will be suitable for employers who, in accordance with the HMRC guidance, wish to make it a specific contractual requirement that employees and others providing their services do not engage in facilitating tax evasion and, if appropriate, comply with the employer’s policy on the prevention of facilitation of tax evasion.

If they do not have one, employers may wish to introduce an anti-facilitation of tax evasion policy (or include a section in a general anti-corruption or ethics policy). A policy must be adapted to the specific business risks of the employer and refer to the particular procedures that have been implemented in view of those risks. A policy could include an explanation of all the reasonable prevention procedures that the employer has put in place as a defence against the corporate offence and to comply with the HMRC guidance, including:

- Having a commitment to preventing the involvement of those acting on the relevant body’s behalf in the criminal facilitation of tax evasion, which might be demonstrated by issuing a prominent message from the board of directors (or the leadership team) against all forms of tax evasion.
- Providing regular training for staff on preventing the facilitation of tax evasion, which may form part of wider financial crime detection and prevention training.

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- Having clear reporting procedures for whistleblowing of suspected facilitation of tax evasion offences.
- Ensuring that the pay and bonus policy/structure encourages reporting and discourages pursuing profit to the point of condoning tax evasion.
- Having regular reviews of the effectiveness of prevention procedures and refining them where necessary.
- Monitoring and enforcing compliance with prevention procedures.
- Giving an overview of its strategy and timeframe to implement its preventative policies.

For a document which could form the basis of an anti-facilitation of tax evasion policy, as part of an employer's prevention procedures, see [Standard document, Anti-facilitation of tax evasion policy](#).

4.5 [You shall comply with any rules, policies and procedures set out in the Staff Handbook, a copy of which [has been given to you **OR** is available from [POSITION]]. The Staff Handbook does not form part of this agreement and we may amend it at any time. To the extent that there is any conflict between the terms of this agreement and the Staff Handbook, this agreement shall prevail.]

### STAFF HANDBOOK, POLICIES AND RULES (OPTIONAL SUB-CLAUSE)

This clause will be relevant if the employer has a staff handbook containing company rules and procedures. Employees are already bound to comply with company rules and policies, published in a handbook or elsewhere, by virtue of the implied term of obedience (see [Practice note, Implied terms in employment contracts: Duty to obey lawful and reasonable orders](#)). However, it may be advisable to reinforce this with an express term, especially for a very senior employee or director who may otherwise think themselves above the staff handbook.

It is usually preferable to keep procedures in the handbook non-contractual. This is to give the

employer flexibility when using the procedures, otherwise a failure to follow the procedures to the letter could result in constructive dismissal (see *Post Office v Strange* [1982] IRLR 515, in which a penalty imposed in breach of a contractual disciplinary procedure was ruled to be a repudiatory breach of contract by the employer).

There may be an argument that a procedure has become contractual through custom and practice, although this is less likely where there is an express term against it (see [Practice note, Implied terms in employment contracts](#)).

4.6 All documents, manuals, hardware and software provided for your use by us, and any data or documents (including copies) produced, maintained or stored on our computer systems or other electronic equipment (including mobile phones), remain our property.

## 5. PLACE OF WORK

### PLACE OF WORK AND MOBILITY CLAUSE

Section 1(4)(h) of the ERA 1996 requires particulars of the place of work or, where the employee works at various places, an indication of that and of the address of the employer.

This clause gives the employer the flexibility to move the employee anywhere within a reasonable area.

Courts and tribunals expect employers to exercise mobility clauses reasonably, or it could be a breach of the implied term of mutual trust and confidence. In the absence of a specific mobility clause, there is a limited right for an employer to make a temporary change to an employee's place of work. For more

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information, see [Practice note, Changing terms of employment: Specific flexibility clauses](#).

Mobility clauses may also give employers greater options in a redundancy situation. See [Practice](#)

[note, Redundancy \(1\): the definition of redundancy: Workplace closures and Mobility/flexibility clauses and the reason for dismissal](#).

5.1 Your normal place of work is [LOCATION] or such other place within [REASONABLE AREA] which [we **OR** the Board] may reasonably require for the proper performance and exercise of your duties.

5.2 You agree to travel on [our **OR** any Group Company's] business (both within the UK or abroad) as may be required for the proper performance of your duties under the Appointment.

5.3 During the Appointment you shall not be required to work outside the UK for any continuous period of more than one month.

### WORKING OVERSEAS (ALTERNATIVE SUB-CLAUSE)

This Clause 5.3 assumes that there is no agreement that would require the employee to work outside the UK for more than one month. If this is the case, that fact must be stated as this is one of the required statutory particulars for a section 1 statement (see [Drafting note, Section 1 statement of terms, above](#)). If the employee is to work overseas for over a month, use [Standard clause, Working overseas clause](#) and delete this Clause 5.3.

For employees commencing work on or before 5 April 2020, this information may be contained in the principal statement or a supplementary statement. However, for employees commencing employment on or after 6 April 2020, the information must be contained within the principal statement itself.

## 6. HOURS OF WORK

### HOURS OF WORK

The Good Work Plan changes which apply to those starting work on or after 6 April 2020 require a section 1 statement to not only state the employee's normal working hours but also the days of the week the employee is required to work. It must also specify whether such hours or days are variable and if they are, the statement should state how they may vary or how that variation will be determined (section 1(4)(c), *ERA 1996*).

The requirement to state how hours or days will vary and how that will be determined at the outset of the contract may pose difficulties for employers employing employees who may be required to work additional hours. In the absence of further guidance, it is unclear what level of detail is required

in relation to variable hours or days of work to satisfy section 1(4)(c). We have drafted this clause on the basis that the employer wishes to comply with section 1(4)(c) and will make every attempt to set out the hours or days the employee may be required to work and the reason for the variation if possible. Given the requirements of section 1(4)(c), the employer should consider explaining the likely frequency of the additional hours, particularly if additional hours are unpaid, and we have included optional wording to provide for this. For information on the consequences of non-compliance with section 1 of ERA 1996 and the limited circumstances in which compensation can be sought, see [Practice note, Section 1 statements: Enforcement and remedies](#).

For employers, there is likely to be a balance to be found between complying with the strict

## Employment contract for a senior employee

requirements of section 1(4)(c) and not overstating any variable unpaid additional hours, with the effect of deterring prospective employees.

Clause 6 assumes that the employee works full-time on fixed days each week. For part-time

options, see [Standard clauses, Part-time employee clauses: Drafting note: Hours of work](#). For other options for atypical working patterns, see [Standard clauses, Additional standard clauses: contracts of employment: Atypical working](#).

Your normal working hours shall be [TIME] to [TIME] on [Mondays] to [Fridays] and these hours and days are not variable. However, you may be required to work additional hours, without extra remuneration, as may be necessary for [[INSERT REASON] **OR** the proper performance of your duties or to meet the needs of the Company] and these hours are variable. [If you are required to work additional hours, we expect that such additional hours will be [infrequent and] [before or after your usual working hours **OR** at any time] on [your normal working days of [Monday] to [Friday] **OR** [Monday] to [Sunday]]].

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