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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART I

#### INTRODUCTORY AND INTERPRETATION

##### CHAPTER III

##### CONTINUOUS EMPLOYMENT

#### **Introductory**

6.—(1) References in any provision of this Order to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.

(2) In computing an employee's period of continuous employment for the purposes of any provision of this Order, any question—

- (a) whether the employee's employment is of a kind counting towards a period of continuous employment, or
- (b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,

shall be determined week by week; but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of twelve months in accordance with Article 7.

(3) Subject to Articles 11 to 13, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.

(4) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

#### **Period of continuous employment**

7.—(1) An employee's period of continuous employment for the purposes of any provision of this Order—

- (a) (subject to paragraphs (2) and (3)) begins with the day on which the employee starts work, and
- (b) ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision.

(2) For the purposes of Articles 190 and 197(1), an employee's period of continuous employment shall be treated as beginning on the employee's eighteenth birthday if that is later than the day on which the employee starts work.

(3) If an employee's period of continuous employment includes one or more periods which (by virtue of Article 11, 12 or 13) while not counting in computing the length of the period do not break

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continuity of employment, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period, or the aggregate number of days falling within those periods, calculated in accordance with the Article in question.

### Weeks counting in computing period

**8.—(1)** Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.  
*Para. (2) rep. by 1999 NI 9*

(3) Subject to paragraph (4), any week (not within paragraph (1)) during the whole or part of which an employee is—

- (a) incapable of work in consequence of sickness or injury,
- (b) absent from work on account of a temporary cessation of work,<sup>F1</sup> or]
- (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose,<sup>F1</sup> . . .

*Sub#para. (d) rep. by 1999 NI 9*

counts in computing the employee's period of employment.

(4) Not more than twenty-six weeks count under paragraph (3)(a)<sup>F1</sup> . . . between any periods falling under paragraph (1).

<b>F1</b> 1999 NI 9
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### Intervals in employment

**9.—(1)** Where in the case of an employee a date later than the date which would be the effective date of termination by virtue of paragraph (1) of Article 129 is treated for certain purposes as the effective date of termination by virtue of paragraph (2) or (4) of that Article the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of Article 140(1) or 153(1) the period for which the employee has been continuously employed.

(2) Where an employee is by virtue of Article 173(1) regarded for the purposes of Part XII as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, the period of the interval counts as a period of employment in ascertaining for the purposes of Article 190 or 197(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under Article 10 or 11).

(3) Where in the case of an employee a date later than the date which would be the relevant date by virtue of paragraphs (2) to (4) of Article 180 is treated for certain purposes as the relevant date by virtue of paragraph (5) of that Article, the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of Article 190 or 197(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under Article 10 or 11).

### Special provisions for redundancy payments

**10.—(1)** This Article applies where a period of continuous employment has to be determined in relation to an employee for the purposes of the application of Article 190 or 197(1).

(2) The continuity of a period of employment is broken where—

- (a) a redundancy payment has previously been paid to the employee (whether in respect of dismissal or in respect of lay-off or short-time), and

- (b) the contract of employment under which the employee was employed was renewed (whether by the same or another employer) or the employee was re-engaged under a new contract of employment (whether by the same or another employer).
- (3) The continuity of a period of employment is also broken where—
  - (a) a payment has been made to the employee (whether in respect of the termination of his employment or lay-off or short-time) in accordance with a scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 or arrangements falling within Article 212(3) or (4), and
  - (b) he commenced new, or renewed, employment.
- (4) The date on which the person's continuity of employment is broken by virtue of this Article—
  - (a) if the employment was under a contract of employment, is the date which was the relevant date in relation to the payment mentioned in paragraph (2)(a) or (3)(a), and
  - (b) if the employment was otherwise than under a contract of employment, is the date which would have been the relevant date in relation to the payment mentioned in paragraph (2) (a) or (3)(a) had the employment been under a contract of employment.
- (5) For the purposes of this Article a redundancy payment shall be treated as having been paid if—
  - (a) the whole of the payment has been paid to the employee by the employer,
  - (b) a tribunal has determined liability and found that the employer must pay part (but not all) of the redundancy payment and the employer has paid that part, or
  - (c) the Department has paid a sum to the employee in respect of the redundancy payment under Article 202.

### **Employment abroad etc.**

- 11.**—(1) This Chapter applies to a period of employment—
- (a) (subject to the following provisions of this Article) even where during the period the employee was engaged in work wholly or mainly outside Northern Ireland, and
  - (b) even where the employee was excluded by or under this Order from any right conferred by this Order.
- (2) For the purposes of Articles 190 and 197(1) a week of employment does not count in computing a period of employment if the employee—
- (a) was employed outside Northern Ireland during the whole or part of the week, and
  - (b) was not during that week an employed earner for the purposes of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 in respect of whom a secondary Class 1 contribution was payable under that Act (whether or not the contribution was in fact paid).
- (3) Where by virtue of paragraph (2) a week of employment does not count in computing a period of employment, the continuity of the period is not broken by reason only that the week does not count in computing the period; and the number of days which, for the purposes of Article 7(3), fall within the intervening period is seven for each week within this paragraph.
- (4) Any question arising under paragraph (2) whether—
- (a) a person was an employed earner for the purposes of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, or
  - (b) if so, whether a secondary Class 1 contribution was payable in respect of him under that Act,
- shall be determined by<sup>[F2]</sup> an officer of the Commissioners of Inland Revenue].

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[<sup>F2</sup>(5) Part III of the Social Security Contributions (Transfer of Functions etc.) (Northern Ireland) Order 1999 (decisions and appeals) shall apply in relation to the determination of any issue by the Commissioners of Inland Revenue under paragraph (4) as if it were a decision falling within Article 7(1) of that Order.]

- (6) Paragraph (2) does not apply in relation to a person who is—
- (a) employed as a master or seaman in a British ship, and
  - (b) ordinarily resident in Northern Ireland.

F2 SI 1999/671

### Industrial disputes

**12.—**(1) A week does not count under Article 8 if during the week, or any part of the week, the employee takes part in a strike.

(2) The continuity of an employee's period of employment is not broken by a week which does not count under this Chapter (whether or not by virtue only of paragraph (1)) if during the week, or any part of the week, the employee takes part in a strike; and the number of days which, for the purposes of Article 7(3), fall within the intervening period is the number of days between the last working day before the strike and the day on which work was resumed.

(3) The continuity of an employee's period of employment is not broken by a week if during the week, or any part of the week, the employee is absent from work because of a lock-out by the employer; and the number of days which, for the purposes of Article 7(3), fall within the intervening period is the number of days between the last working day before the lock-out and the day on which work was resumed.

### Reinstatement after military service

**13.—**(1) If a person who is entitled to apply to his former employer under the Reserve Forces (Safeguard of Employment) Act 1985 enters the employment of the employer not later than the end of the six month period mentioned in section 1(4)(b) of that Act, his period of service in the armed forces of the Crown in the circumstances specified in section 1(1) of that Act does not break his continuity of employment,

(2) In the case of such a person the number of days which, for the purposes of Article 7(3), fall within the intervening period is the number of days between the last day of his previous period of employment with the employer (or, if there was more than one such period, the last of them) and the first day of the period of employment beginning in the six month period.

### Change of employer

**14.—**(1) Subject to the provisions of this Article, this Chapter relates only to employment by the one employer.

(2) If a trade or business, or an undertaking (whether or not established by or under a statutory provision), is transferred from one person to another—

- (a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee, and
- (b) the transfer does not break the continuity of the period of employment.

(3) If by or under any statutory provision a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer—

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- (a) the employee's period of employment at the time when the modification takes effect counts as a period of employment with the second body corporate, and
  - (b) the change of employer does not break the continuity of the period of employment.
- (4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased—
- (a) the employee's period of employment at the time of the death counts as a period of employment with the employer's personal representatives or trustees, and
  - (b) the death does not break the continuity of the period of employment.
- (5) If there is a change in the partners, personal representatives or trustees who employ any person—
- (a) the employee's period of employment at the time of the change counts as a period of employment with the partners, personal representatives or trustees after the change, and
  - (b) the change does not break the continuity of the period of employment.
- (6) If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters the second employer's employment, is an associated employer of the first employer—
- (a) the employee's period of employment at that time counts as a period of employment with the second employer, and
  - (b) the change of employer does not break the continuity of the period of employment.
- (7) If a person employed in relevant employment by a health service employer is taken into relevant employment by another such employer, his period of employment at the time of the change of employer counts as a period of employment with the second employer and the change does not break the continuity of the period of employment.
- (8) For the purposes of paragraph (7) employment is relevant employment if it is employment of a description—
- (a) in which persons are engaged while undergoing professional training which involves their being employed successively by a number of different health service employers, and
  - (b) which is specified in an order made by the Department.
- (9) The following are health service employers for the purposes of paragraphs (7) and (8)—
- (a) Health and Social Services Boards;
  - (b) Special Health and Social Services Agencies;
  - (c) Health and Social Services Trusts.

### **Reinstatement or re-engagement of dismissed employee**

15.—(1) Regulations made by the Department may make provision—

- (a) for preserving the continuity of a person's period of employment for the purposes of this Chapter or for the purposes of this Chapter as applied by or under any other statutory provision specified in the regulations, or
- (b) for modifying or excluding the operation of Article 10 subject to the recovery of any such payment as is mentioned in that Article,

in cases where<sup>F3</sup> . . . a dismissed employee is reinstated<sup>F3</sup>, re#engaged or otherwise re#employed] by his employer or by a successor or associated employer of that employer<sup>F3</sup> in any circumstances prescribed by the regulations.]

*Paras. (2)#(4) rep. by 1998 NI 8*

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