
STATUTORY INSTRUMENTS

1998 No. 1761 (N.I. 15)

NORTHERN IRELAND

**The Employment Rights (Time off for Study
or Training) (Northern Ireland) Order 1998**

Made - - - - *21st July 1998*
Laid before Parliament *10th August 1998*
Coming into operation on a day to be appointed under
Article 1(2)

At the Court at Buckingham Palace, the 21st day of July 1998

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of sections 32 and 33 of the Teaching and Higher Education Act 1998:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 45 of the said Act of 1998) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title and commencement

1.—(1) This Order may be cited as the Employment Rights (Time off for Study or Training) (Northern Ireland) Order 1998.

(2) This Order shall come into operation on such day as the Department of Economic Development may by order appoint.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

Right of young persons to time off for study or training

3. After Article 91 of the Employment Rights (Northern Ireland) Order 1996 there shall be inserted—

“Study or training”

Right to time off for young person for study or training

91A.—(1) An employee who—

- (a) is aged 16 or 17,
- (b) is not receiving full-time secondary or further education, and
- (c) has not attained such standard of achievement as is prescribed by regulations made by the Department with the approval of the Department of Education,

is entitled to be permitted by his employer to take time off during the employee’s working hours in order to undertake study or training leading to a relevant qualification.

(2) In this Article—

- (a) “secondary education” has the same meaning as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986;
- (b) “further education” has the same meaning as in Article 3 of the Further Education (Northern Ireland) Order 1997; and
- (c) “relevant qualification” means an external qualification the attainment of which—
 - (i) would contribute to the attainment of the standard prescribed for the purposes of paragraph (1)(c), and
 - (ii) would be likely to enhance the employee’s employment prospects (whether with his employer or otherwise);

and for the purposes of sub-paragraph (c) “external qualification” means an academic or vocational qualification awarded or authenticated by such person or body as may be specified in or under regulations made by the Department with the approval of the Department of Education.

(3) An employee who—

- (a) satisfies the requirements of sub-paragraphs (a) to (c) of paragraph (1), and
- (b) is for the time being supplied by his employer to another person (“the principal”) to perform work in accordance with a contract made between the employer and the principal,

is entitled to be permitted by the principal to take time off during the employee’s working hours in order to undertake study or training leading to a relevant qualification.

(4) Where an employee—

- (a) is aged 18,
- (b) is undertaking study or training leading to a relevant qualification, and
- (c) began such study or training before attaining that age,

paragraphs (1) and (3) shall apply to the employee, in relation to that study or training, as if “or 18” were inserted at the end of paragraph (1)(a).

(5) The amount of time off which an employee is to be permitted to take under this Article, and the occasions on which and any conditions subject to which time off may be so taken, are those that are reasonable in all the circumstances having regard, in particular, to—

- (a) the requirements of the employee’s study or training, and
- (b) the circumstances of the business of the employer or the principal and the effect of the employee’s time off on the running of that business.

(6) References in this Article to study or training are references to study or training on the premises of the employer or (as the case may be) principal or elsewhere.

(7) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.”.

Further provisions as to time off for study or training

4. After Article 91A of the Employment Rights (Northern Ireland) Order 1996 (as inserted by Article 3) there shall be inserted—

“Right to remuneration for time off under Article 91A

91B.—(1) An employee who is permitted to take time off under Article 91A is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week’s pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week’s pay shall be divided instead by—

- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee’s working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

(4) The considerations referred to in paragraph (3)(b) are—

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 91A goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Complaints to industrial tribunals

91C.—(1) An employee may present a complaint to an industrial tribunal that—

- (a) his employer, or the principal referred to in paragraph (3) of Article 91A, has unreasonably refused to permit him to take time off as required by that Article, or
- (b) his employer has failed to pay the whole or any part of any amount to which the employee is entitled under Article 91B.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer or the principal has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer or the principal, as the case may be, to pay to the employee an amount equal to the remuneration to which he would have been entitled under Article 91B if the employer or the principal had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under Article 91B, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.”.

Amendments

5. The minor and consequential amendments set out in the Schedule shall have effect.

N.H. Nicholls
Clerk of the Privy Council

SCHEDULE

Article 5.

MINOR AND CONSEQUENTIAL AMENDMENTS

The Employment Rights (Northern Ireland) Order 1996 (NI 16)

1. In Article 21 (rights during employment) after paragraph (4) insert—

“(4A) Where the calculation is for the purposes of Article 91B, the calculation date is the day on which the time off was taken or on which it is alleged the time off should have been permitted.”.
2. After Article 70 insert—

“Employees exercising right to time off work for study or training

70A.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer or the principal (within the meaning of Article 91A(3)) done on the ground that, being a person entitled to—

- (a) time off under Article 91A(1) or (3), and
- (b) remuneration under Article 91B(1) in respect of that time taken off,

the employee exercised (or proposed to exercise) that right or received (or sought to receive) such remuneration.

(2) Except where an employee is dismissed in circumstances in which, by virtue of Article 240, Part XI does not apply to the dismissal, this Article does not apply where the detriment in question amounts to dismissal (within the meaning of that Part).”.

3. In Article 71 (complaints to industrial tribunals)—
 - (a) in paragraph (1) for “69 or 70” substitute “69, 70 or 70A”; and
 - (b) at the end add—

“(5) In this Article and Article 72 any reference to the employer includes, where a person complains that he has been subjected to a detriment in contravention of Article 70A, the principal (within the meaning of Article 91A(3)).”.
4. In Article 86 (right to time off for occupational pension scheme trustees), at the end of paragraph (3) add
“, and
(c) references to training are to training on the employer’s premises or elsewhere.”.
5. In Article 135 (assertion of statutory right) at the end add—

“(5) In this Article any reference to an employer includes, where the right in question is conferred by Article 91A, the principal (within the meaning of Article 91A(3)).”.

The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997 (NI 20)

6. In paragraph 10(11) of Schedule 2 for “69 or 70” substitute “69, 70 or 70A”.

Status: *This is the original version (as it was originally made).*

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made only for purposes corresponding to those of sections 32 and 33 of the Teaching and Higher Education Act 1998.

This Order gives certain young employees the right to paid time off to study or train for qualifications.