
DRAFT STATUTORY RULES OF NORTHERN IRELAND

2016 No.

The Working Time Regulations (Northern Ireland) 2016

PART 2

Rights and Obligations Concerning Working Time

General

3.—(1) The provisions of this Part have effect subject to the exceptions provided for in Part 3.

(2) Where, in this Part, separate provision is made as respects the same matter in relation to workers generally and to young workers, the provision relating to workers generally applies only to adult workers and those young workers to whom, by virtue of any exception in Part 3, the provision relating to young workers does not apply.

Maximum weekly working time

4.—(1) Unless an employer has first obtained the worker's agreement in writing to perform such work, a worker's working time, including overtime, in any reference period which is applicable in the case of that worker, shall not exceed an average of 48 hours for each seven days.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each worker employed, by the employer, in relation to whom it applies and shall keep up-to-date records of all workers who carry out work to which it does not apply by reason of the fact that the employer has obtained the worker's agreement as mentioned in paragraph (1).

(3) Subject to paragraphs (4) and (5) and any agreement under regulation 27(b), the reference periods which apply in the case of a worker are—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or
- (b) in any other case, any period of 17 weeks in the course of the worker's employment.

(4) Where a worker has worked for an employer for less than 17 weeks, the reference period applicable in the case of that worker is the period that has elapsed since starting work for the employer.

(5) Paragraphs (3) and (4) shall apply to a worker who is excluded from the scope of certain provisions of these Regulations by regulation 25 as if for each reference to 17 weeks there were substituted a reference to 26 weeks.

(6) For the purposes of this regulation, a worker's average working time for each seven days during a reference period shall be determined according to the formula—

$$\frac{A + B}{C}$$

where—

A is the aggregate number of hours comprised in the worker's working time during the course of the reference period;

B is the aggregate number of hours comprised in the worker's working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period on which the worker has worked equals the number of excluded days during the reference period; and

C is the number of weeks in the reference period.

- (7) In paragraph (6), "excluded days" means days comprised in—
- (a) any period of annual leave taken by the worker in exercise of an entitlement under regulation 15;
 - (b) any period of sick leave taken by the worker;
 - (c) any period of maternity, paternity, adoption or parental leave taken by the worker; and
 - (d) any period in respect of which the limit specified in paragraph (1) did not apply in relation to the worker by reason of the fact that the employer has obtained the worker's agreement as mentioned in paragraph (1).

Agreement to exclude the maximum

5.—(1) An agreement for the purposes of regulation 4(1)—

- (a) may either relate to a specified period or apply indefinitely; and
- (b) subject to any provision in the agreement for a different period of notice, shall be terminable by the worker giving not less than seven days' notice to the employer in writing.

(2) Where an agreement for the purposes of regulation 4(1) makes provision for the termination of the agreement after a period of notice, the notice period provided for shall not exceed three months.

Maximum working time for young workers

6.—(1) A young worker's working time shall not exceed—

- (a) eight hours a day, or
- (b) 40 hours a week.

(2) If, on any day, or, as the case may be, during any week, a young worker is employed by more than one employer, the young worker's working time shall be determined for the purpose of paragraph (1) by aggregating the number of hours worked for each employer.

(3) For the purposes of paragraphs (1) and (2), a week starts at midnight between Sunday and Monday.

(4) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limits specified in paragraph (1) are complied with in the case of each worker employed by the employer in relation to whom they apply.

Length of night work

7.—(1) A night worker's normal hours of work in any reference period which is applicable, in the case of that worker, shall not exceed an average of eight hours for each 24 hours.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each night worker employed by the employer.

(3) The reference periods which apply in the case of a night worker are—

(a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or

(b) in any other case, any period of 17 weeks in the course of the night worker's employment.

(4) Where a worker has worked for an employer for less than 17 weeks, the reference period applicable, in the case of that worker, is the period that has elapsed since the worker started work for the employer.

(5) For the purposes of this regulation, a night worker's average normal hours of work for each 24 hours during a reference period shall be determined according to the formula—

$$\frac{A}{B - C}$$

where—

A is the number of hours during the reference period which are normal working hours for that worker;

B is the number of days during the reference period; and

C is the total number of hours during the reference period comprised in rest periods spent by the worker in pursuance of the worker's entitlement under regulation 13, divided by 24.

(6) An employer shall ensure that no night worker employed, by that employer, whose work involves special hazards or heavy physical or mental strain works for more than eight hours in any 24-hour period during which the night worker performs night work.

(7) For the purposes of paragraph (6), the work of a night worker shall be regarded as involving special hazards or heavy physical or mental strain if—

(a) it is identified as such in—

(i) a collective agreement, or

(ii) a workforce agreement,

which takes account of the specified effects and hazards of night work, or

(b) it is recognised in a risk assessment made by the employer under regulation 3 of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000⁽¹⁾ as involving a significant risk to the health and safety of workers.

Night work by young workers

8. An employer shall ensure that no young worker employed, by that employer, works during the restricted period.

Health assessment and transfer of night workers to day work

9.—(1) An employer—

(a) shall not assign an adult worker to work which is to be undertaken during periods such that the worker will become a night worker unless—

(i) the employer has ensured that the worker will have the opportunity of a free health assessment before the worker takes up the assignment; or

(ii) the worker had a health assessment before being assigned to work to be undertaken during such periods on an earlier occasion, and the employer has no reason to believe that that assessment is no longer valid; and

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- (b) shall ensure that each night worker has the opportunity of a free health assessment at regular intervals of whatever duration may be appropriate in each case.
- (2) Subject to paragraph (4), an employer—
- (a) shall not assign a young worker to work during the restricted period unless—
- (i) the employer has ensured that the young worker will have the opportunity of a free assessment of health and capacities before taking up the assignment; or
- (ii) the young worker had an assessment of health and capacities before being assigned to work during the restricted period on an earlier occasion, and the employer has no reason to believe that that assessment is no longer valid; and
- (b) shall ensure that each young worker employed and assigned to work during the restricted period has the opportunity of a free assessment of health and capacities at regular intervals of whatever duration may be appropriate in each case.
- (3) For the purposes of paragraphs (1) and (2), an assessment is free if it is at no cost to the worker to whom it relates.
- (4) The requirements in paragraph (2) do not apply in a case where the work a young worker is assigned to do is of an exceptional nature.
- (5) A person shall not disclose an assessment made for the purposes of this regulation to any person other than the worker to whom it relates, unless—
- (a) the worker has given consent in writing to the disclosure, or
- (b) the disclosure is confined to a statement that the assessment shows the worker to be fit—
- (i) in a case where paragraph (1)(a)(i) or (2)(a)(i) applies, to take up an assignment, or
- (ii) in a case where paragraph (1)(b) or (2)(b) applies, to continue to undertake an assignment.
- (6) Where—
- (a) a registered medical practitioner has advised an employer that a worker employed by the employer is suffering from health problems which the practitioner considers to be connected with the fact that the worker performs night work, and
- (b) it is possible for the employer to transfer the worker to work—
- (i) to which the worker is suited, and
- (ii) which is to be undertaken during periods such that the worker will cease to be a night worker,
- the employer shall transfer the worker accordingly.

Pattern of work

10. Where the pattern according to which an employer organises work is such as to put the health and safety of a worker employed by the employer at risk, in particular because the work is monotonous or the work-rate is predetermined, the employer shall ensure that the worker is given adequate rest breaks.

Records

11. An employer shall—

- (a) keep records which are adequate to show whether the limits specified in regulations 4(1), 6(1) and 7(1) and (6) and the requirements in regulations 8 and 9(1) and (2) are being complied with in the case of each worker employed in relation to whom they apply; and

- (b) retain such records for two years from the date on which they were made.

Daily rest period

12.—(1) A worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which the worker works for an employer.

(2) Subject to paragraph (3), a young worker is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period during which the young worker works for an employer.

(3) The minimum rest period provided for in paragraph (2) may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration.

Weekly rest period

13.—(1) Subject to paragraph (2), a worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven-day period during which the worker works for an employer.

(2) If the employer so determines, a worker shall be entitled to either—

- (a) two uninterrupted rest periods each of not less than 24 hours in each 14-day period during which the worker works for the employer; or
- (b) one uninterrupted rest period of not less than 48 hours in each such 14-day period,

in place of the entitlement provided for in paragraph (1).

(3) Subject to paragraph (8), a young worker is entitled to a rest period of not less than 48 hours in each seven-day period during which the young worker works for the employer.

(4) For the purpose of paragraphs (1) to (3), a seven-day period or (as the case may be) 14-day period shall be taken to begin—

- (a) at such times on such days as may be provided for the purposes of this regulation in a relevant agreement; or
- (b) where there are no provisions of a relevant agreement which apply, at the start of each week or (as the case may be) every other week.

(5) In a case where, in accordance with paragraph (4), 14-day periods are to be taken to begin at the start of every other week, the first such period applicable in the case of a particular worker shall be taken to begin at the start of the week in which that employment begins.

(6) For the purposes of paragraphs (4) and (5), a week starts at midnight between Sunday and Monday.

(7) The minimum rest period to which a worker is entitled under paragraph (1) or (2) shall not include any part of a rest period to which the worker is entitled under regulation 12(1), except where this is justified by objective or technical reasons or reasons concerning the organisation of work.

(8) The minimum rest period to which a young worker is entitled under paragraph (3)—

- (a) may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration; and
- (b) may be reduced where this is justified by technical or organisation reasons, but not to less than 36 consecutive hours.

Rest breaks

14.—(1) Where a worker's daily working time is more than six hours, the worker is entitled to a rest break.

(2) The details of the rest break to which a worker is entitled under paragraph (1), including its duration and the terms on which it is granted, shall be in accordance with any provisions for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.

(3) Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes, and the worker is entitled to spend it away from a workstation if the worker has one.

(4) Where a young worker's daily working time is more than four and a half hours, the young worker is entitled to a rest break of at least 30 minutes, which shall be consecutive if possible, and the young worker is entitled to spend it away from a workstation if the young worker has one.

(5) If, on any day, a young worker is employed by more than one employer, the young worker's daily working time shall be determined for the purpose of paragraph (4) by aggregating the number of hours worked for each employer.

Entitlement to annual leave

15.—(1) Subject to paragraph (4), a worker is entitled to four weeks' annual leave in each leave year.

(2) A worker's leave year, for the purposes of this regulation, begins—

- (a) on such date during the calendar year as may be provided for in a relevant agreement; or
- (b) where there are no provisions of a relevant agreement which apply, on the date on which the worker's employment begins and each subsequent anniversary of that date.

(3) Paragraph (2) does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

(4) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) the worker's first leave year begins, the leave to which the worker is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which the worker's employment begins.

(5) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

- (a) it may only be taken in the leave year in respect of which it is due, and
- (b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

Entitlement to additional annual leave

16.—(1) Subject to regulation 33 and paragraphs (2) and (4), a worker is entitled to a period of 1.6 weeks additional leave in each leave year.

(2) The aggregate entitlement provided for in paragraph (1) and regulation 15(1) is subject to a maximum of 28 days.

(3) A worker's leave year begins for the purposes of this regulation on the same date as the worker's leave year begins for the purposes of regulation 15.

(4) Where the date on which a worker's employment begins is later than the date on which the worker's first leave year begins, the additional leave to which the worker is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which the worker's employment begins.

(5) Leave to which a worker is entitled under this regulation may be taken in instalments, but it may not be replaced by a payment in lieu except where the worker's employment is terminated.

(6) A relevant agreement may provide for any leave to which a worker is entitled under this regulation to be carried forward into the leave year immediately following the leave year in respect of which it is due.

Compensation related to entitlement to leave

17.—(1) This regulation applies where—

- (a) a worker’s employment is terminated during the course of the worker’s leave year, and
- (b) on the date on which the termination takes effect (“the termination date”), the proportion of leave taken to which the worker is entitled in the leave year under regulation 15 and regulation 16 differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, the employer shall make a payment to the worker in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

- (a) such sum as may be provided for the purposes of this regulation in a relevant agreement, or
- (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 20 in respect of a period of leave determined according to the formula—

$$(A \times B) - C$$

where—

A is the period of leave to which the worker is entitled under regulation 15 and regulation 16;

B is the proportion of the worker’s leave year which expired before the termination date; and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, the worker shall compensate the employer, whether by a payment, by undertaking additional work or otherwise.

Dates on which leave is taken

18.—(1) A worker may take leave to which the worker is entitled under regulation 15 and regulation 16 on such days as the worker may elect by giving notice to the employer in accordance with paragraph (3), subject to any requirement imposed by the employer under paragraph (2).

(2) A worker’s employer may require the worker—

- (a) to take leave to which the worker is entitled under regulation 15 or regulation 16; or
- (b) not to take such leave,

on particular days, by giving notice to the worker in accordance with paragraph (3).

(3) A notice under paragraph (1) or (2)—

- (a) may relate to all or part of the leave to which a worker is entitled in a leave year;
- (b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and
- (c) shall be given to the employer or, as the case may be, the worker before the relevant date.

(4) The relevant date, for the purposes of paragraph (3), is the date—

- (a) in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates, and
 - (b) in the case of a notice under paragraph (2)(b), as many days in advance of the earliest day so specified as the number of days or part-days to which the notice relates.
- (5) Any right or obligation under paragraphs (1) to (4) may be varied or excluded by a relevant agreement.
- (6) This regulation does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

Leave during the first year of employment

19.—(1) During the first year of a worker’s employment, the amount of leave the worker may take at any time in exercise of the worker’s entitlement under regulation 15 or regulation 16 is limited to the amount which is deemed to have accrued at that time under paragraph (2), as modified under paragraph (3) in a case where that paragraph applies, less the amount of leave (if any) that the worker has already taken during that year.

(2) For the purposes of paragraph (1), leave is deemed to accrue over the course of the worker’s first year of employment, at the rate of one-twelfth of the amount specified in regulation 15(1) and regulation 16(1), subject to the limit contained in regulation 16(2), on the first day of each month of that year.

(3) Where the amount of leave that has accrued in a particular case includes a fraction of a day other than a half-day, the fraction shall be treated as a half-day if it is less than a half-day and as a whole day if it is more than a half-day.

Payment in respect of periods of leave

20.—(1) A worker is entitled to be paid in respect of any period of annual leave to which the worker is entitled under regulation 15 and regulation 16, at the rate of a week’s pay in respect of each week of leave.

(2) Articles 17 to 20 of the 1996 Order shall apply for the purpose of determining the amount of a week’s pay for the purposes of this regulation, subject to the modifications set out in paragraph (3).

(3) The provisions referred to in paragraph (2) shall apply—

- (a) as if references to the employee were references to the worker;
- (b) as if references to the employee’s contract of employment were references to the worker’s contract;
- (c) as if the calculation date were the first day of the period of leave in question; and
- (d) as if the references to Articles 23 and 24 did not apply.

(4) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under the worker’s contract (“contractual remuneration”) (and paragraph (1) does not confer a right under that contract).

(5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Entitlements under other provisions

21. Where during any period a worker is entitled to a rest period, rest break or annual leave both under a provision of these Regulations and under a separate provision (including a provision of the worker's contract), the worker may not exercise the two rights separately, but may, in taking a rest period, break or leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.