

EXPLANATORY MEMORANDUM TO
The Working Time Regulations (Northern Ireland) 2016

S.R. 2016 No. 49

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the statutory rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The statutory rule is made under powers conferred by section 2(2) of the European Communities Act 1972 and Article 15 of the Work and Families (Northern Ireland) Order 2006 and is subject to the draft affirmative resolution procedure before the Assembly.

2. Purpose

- 2.1. The Statutory Rule will consolidate and replace the provisions of the Working Time Regulations (Northern Ireland) 1998 (the '1998 Regulations') and the ten Statutory Rules which amended it from 1998 to 2009. A reduction in the administrative burden to employers will be achieved through the consolidation of a number of separate statutory rules into a single set of Regulations. This will make navigation of the provisions of the Regulations easier for users.

3. Background

- 3.1. The 1998 Regulations as amended, implement elements of European Council Directive No. 2003/88/EC and European Directive 94/33/EC concerning certain aspects of the organisation of working time. They lay down minimum conditions relating to weekly working time, rest entitlements and annual leave, and make special provision for working hours and health assessment in relation to night workers. The 1998 Regulations have been amended regularly since introduction, meaning that users may have to consult many pieces of legislation to determine a legal position or compliance requirements.

4. Consultation

- 4.1. Under the Better Regulation framework, a project team, representative of employee and employer interests, was established to review the Regulations. This ensured that the review was informed by the

knowledge and expertise of practitioners and key stakeholders. The project team met three times and achieved consensus on a number of actions, including the reduction in administrative burden through consolidation of the Regulations.

- 4.2. The provisions of the 1998 Regulations and subsequent amending Regulations have previously been the subject of public consultation. Since the draft Regulations, apart from minor referencing updates, consolidate and replace the provisions currently contained within those existing Regulations, no further public consultation was deemed necessary.

5. Equality Impact

- 5.1 This Statutory Rule does not introduce any new provisions into the consolidated Regulations, apart from minor referencing updates, removal of spent legislation and gender neutralisation. The Department considers that that this Statutory Rule will not discriminate against any of the categories under Section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

- 6.1 This Statutory Rule does not introduce any new provisions into the consolidated Regulations apart from minor referencing updates, removal of spent legislation and gender neutralisation. The Department considers that an assessment is not necessary. The proposals result in no extra costs on employers, charities or voluntary bodies. There are also no added duties imposed on the regulatory bodies that enforce elements of these Regulations.

7. Financial Implications

- 7.1 None.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. This consolidation exercise will have no impact on community law or convention rights.

9. EU Implications

9.1. The 1998 Regulations as amended, implement elements of European Council Directive No. 2003/88/EC and European Directive 94/33/EC concerning certain aspects of the organisation of working time. They lay down minimum conditions relating to weekly working time, rest entitlements and annual leave, and make special provision for working hours and health assessment in relation to night workers. This consolidation exercise does not implement any new European Directives or any of the recent European Court of Justice rulings.

10. Parity or Replicatory Measure

10.1. There are no plans at present for the Working Time Regulations 1998 (the GB equivalent of the Working Time Regulations (Northern Ireland) 1998) and subsequent amending Statutory Instruments to be consolidated.

11. Additional Information

Regulation 1 Citation and commencement

Regulation 1 cites the name of the Regulations and when they come into operation.

Regulation 2 Interpretation

Regulation 2 attracts the Interpretation Act (Northern Ireland) 1954 to the Regulations and provides definitions for the Regulations.

Regulation 3 General

Regulation 3 provides for exceptions for workers and young workers where separate provision is made as respects the same matter.

Regulation 4 Maximum weekly working time

Regulation 4 makes regulations to ensure a worker's working time shall not exceed an average of 48 hours for each seven days, without the worker's agreement in writing having first been obtained.

Regulation 5 Agreement to exclude the maximum

Regulation 5 allows for agreements, for the purposes of Regulation 4, to exclude the maximum weekly working time limits either indefinitely, or for a specified period, and makes provision for the termination of the agreement after a period of notice.

Regulation 6 Maximum working time for young workers

Regulation 6 limit young workers' working time to eight hours a day, or 40 hours a week, and requires employers to ensure that these limits are complied with.

Regulation 7 Length of night work

Regulation 7 limits a night worker's normal hours of work in any reference period to an average of eight hours for each 24 hour period. This regulation provides that employers shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified is complied with.

Night workers, whose work involves special hazards or heavy physical or mental strain, as identified in a collective agreement, workforce agreement or as part of a risk assessment under Health and Safety regulations, are limited to eight hours in any 24 hour period. No reference period applies to work of this nature.

Regulation 8 Night work by young workers

Regulation 8 requires employers to ensure that no young worker works during a restricted period, defined as the period between 10 p.m. and 6 a.m., or, in a case where the worker is contracted to work after 10 p.m., the period between 11 p.m. and 7 a.m.

Regulation 9 Health assessment and transfer of night workers to day work.

Regulation 9 ensures that workers have the opportunity of a free health assessment before they become, and at regular intervals while they are, a night worker. If a registered medical practitioner advises that a night worker is suffering from health problems connected with night work and it is possible to transfer the night worker to work suited to them, the employer shall transfer the worker accordingly.

Regulation 10 Pattern of work

Regulation 10 ensures workers are given adequate rest breaks where the pattern of work puts the health and safety of the worker at risk, because the work is monotonous or the work-rate is predetermined.

Regulation 11 Records

Regulation 11 requires employers to retain records for two years from the date on which they were made. The records must be adequate to show whether specified limits and requirements in these Regulations are being complied with.

Regulation 12 Daily rest periods

Regulation 12 entitles a worker to a rest period of not less than eleven consecutive hours in each 24-hour period during which the worker works. A young worker is entitled to a rest period of not less than 12 consecutive hours in each 24-hour period.

Regulation 13 Weekly rest periods

Regulation 13 entitles a worker to an uninterrupted rest period of not less than 24 hours in each seven-day period. This may be replaced by two uninterrupted rest periods each of not less than 24 hours, or one uninterrupted rest period of not less than 48 hours, in each such 14-day period during which the worker works for the employer.

A young worker is entitled to a rest period of not less than 48 hours in each seven-day period. This rest period 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 may be reduced where this is justified by technical or organisation reasons, but not to less than 36 consecutive hours

Regulation 14 Rest breaks

Regulation 14 entitles a worker to a break of not less than 20 minutes if the worker's daily working time is more than six hours. A young worker is entitled to a rest break of at least 30 minutes where the worker's daily working time is more than four and a half hours. If a young worker is employed by more than one employer on any day, the daily working time shall be an aggregate of the number of hours worked for each employer.

Regulation 15 Entitlement to annual leave

Regulation 15 entitles a worker to four weeks' annual leave in each leave year. This leave may only be taken in the leave year in respect of which it is due, and it may not be replaced by a payment in lieu except where the workers employment is terminated.

Regulation 16 Entitlement to additional annual leave

Regulation 16 provides for an additional annual leave entitlement of 1.6 weeks. It also provides that the aggregate annual holiday entitlement is subject to a maximum of 28 days; that the additional holiday may not be replaced by a payment in lieu except where the worker's employment is terminated; and that this holiday entitlement may be carried over to the following year where there is a relevant agreement to do so.

Regulation 17 Compensation related to entitlement to leave

Regulation 17 provides a worker with the right to receive payment for untaken leave accrued; where the worker's employment is terminated during the course of his leave year.

Regulation 18 Dates on which leave is taken

Regulation 18 provides regulations on notice requirements for workers and employers for requesting and taking leave to which a worker is entitled.

Regulation 19 Leave during the first year of employment

Regulation 19 limits the extent to which a worker is able to exercise the entitlement to leave during the first year of employment. The amount of leave a worker may take at any time is limited to the amount that the worker has "accrued" at that time; accrual is at the rate of one-twelfth of the annual entitlement at the beginning of each month.

Regulation 20 Payment in respect of periods of leave

Regulation 20 entitles a worker to be paid in respect of any period of annual leave to which the worker is entitled under these Regulations, at the rate of a week's pay in respect of each week of leave.

Regulation 21 Entitlements under other provisions

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 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.

Regulation 22 Excluded sectors

Regulation 22 disapplies the provisions of the 2016 Regulations for certain workers, such as seafarers, workers on board sea-going fishing vessels and certain workers on inland waterways.

Workers where characteristics peculiar to certain specific services inevitably conflict with the provisions of these Regulations, such as the armed forces or the police, and mobile staff in civil aviation to whom Council Directive 2000/79/EC applies are also excluded from a number of these regulations. Workers performing mobile road transport activities to whom Directive 2002/15/EC applies

are also excluded from a number of these regulations. The regulations on compensatory rest do not apply to workers to whom the Cross-border Railways Services (Working Time) Regulations (Northern Ireland) 2008 apply.

Regulation 23 Domestic service

Regulation 23 lists certain regulations that do not apply to a worker employed as a domestic servant in a private household.

Regulation 24 Unmeasured working time

Regulation 24 provides for exceptions from provisions of these Regulations relating to weekly working time, night work, rest periods and breaks for workers whose working time is not measured or predetermined; or who can themselves determine the duration of their working time.

Regulation 25 Other special services

Regulation 25 lists a number of special cases to which the provisions; relating to night work limits and daily, weekly and in-work rest periods and breaks for workers do not apply, subject to the worker receiving compensatory rest under Regulation 28.

Regulation 26 Shift workers

Regulation 26 lists circumstances when regulations on daily rest and weekly rest periods between shifts do not apply to shift workers, subject to the worker receiving compensatory rest under Regulation 28.

Regulation 27 Collective and workforce agreements

Regulation 27 lists the regulations that may be modified or excluded under a collective or a workforce agreement

Regulation 28 Compensatory Rest

Regulation 28 provides for periods of compensatory rest where the application of any provision of these Regulations is excluded by regulation 25 or 26, and a worker is accordingly required by his employer to work during a period which would otherwise be a rest period or is modified or excluded by means of a collective agreement or a workforce agreement.

Regulation 29 Mobile Workers

Regulation 29 excludes mobile workers from night work restrictions and rest entitlements, but entitles them to 'adequate rest'.

Regulation 30 Workers in the armed services

Regulation 30 provides for exceptions to these Regulations for workers and young workers serving as members of the armed services.

Regulation 31 Doctors in training

Regulation 31 modifies the reference period for doctors in training to 26 weeks for the maximum weekly working time limit.

Regulation 32 Workers employed in offshore work

Regulation 32 modifies the reference period for workers employed in offshore work to 52 weeks for the maximum weekly working time limit.

Regulation 33 Entitlement to additional annual leave under a relevant agreement

Regulation 33 provides an exemption from the provisions of Regulation 16(entitlement to additional annual leave) for those employers who, by virtue of a relevant agreement, provide each worker with an annual leave entitlement of 1.6 weeks or 8 days (whichever is the lesser) above the stated entitlement.

Regulation 34 Young workers: force majeure

Regulation 34 lists occasions when regulations on maximum working time, night work, daily rest and in work rest periods do not apply to a young worker. These occur when no adult worker is available to perform the work and are due to unusual and unforeseeable, or exceptional, circumstances. This is subject to the young worker receiving compensatory rest within three weeks.

Regulation 35 Other exceptions relating to young workers

Regulation 35 lists exceptions where the maximum working time and night work regulations for young workers do not apply, however the young worker shall be supervised by an adult worker where such supervision is necessary for the young worker's protection, and the young worker shall be allowed an equivalent period of compensatory rest.

Regulation 36 Enforcement

Regulation 36 defines terms used for the enforcement of the Working Time Regulations (Northern Ireland) 2016. This regulation also lists the bodies responsible for enforcement of various elements within these Regulations; they are the Health and Safety Executive for Northern Ireland, District Councils, the Civil Aviation Authority and the Department of the Environment.

Regulation 37 Offences

Regulation 37 makes provision for offences that employers who fail to comply with any of the relevant requirements shall be guilty. These offences are subject to powers conferred by Schedule 3 to these Regulations where an inspector is exercising, or has exercised any power, conferred by Schedule 3.

Regulation 38 Offences due to fault of other person

Regulation 38 makes provision for enforcement of these Regulations where an offence is committed by any person due to the act, or default, of some other person.

Regulation 39 Offences by bodies corporate etc.

Regulation 39 amends the Interpretation Act (Northern Ireland) 1954 for an offence committed by a corporate body under these Regulations and includes provision for offences committed by partnerships.

Regulation 40 Restriction on institution of proceedings

Regulation 40 limits the institution of proceedings for an offence to an inspector, or by, or with the consent of the Director of Public Prosecutions for Northern Ireland.

Regulation 41 Prosecutions by inspectors

Regulation 41 provides that an inspector, if authorised by an enforcement authority, may prosecute before a court of summary jurisdiction proceedings for an offence under these Regulations.

Regulation 42 Power of court to order cause of offence to be remedied

Regulation 42 provides, upon conviction, for a court, in addition to or instead of imposing punishment, to order a person to take such steps as may be specified to remedy the matter.

Regulation 43 Remedies

Regulation 43 provides a worker with the right to seek redress through an industrial tribunal for a refusal by his employer to permit the worker to exercise a number of rights under these Regulations. This regulation also provides for time limits for presentation of a complaint to an industrial tribunal and for the industrial tribunal to award compensation if the complaint is found to be well-founded.

Regulation 44 Extension of time limits because of mediation in certain cross-border disputes.

Regulation 44 provides for the extension of time limits by the industrial tribunal for relevant disputes involving mediation in civil and commercial matters under the “Mediation Directive” of the European Parliament (Directive 2008/52/EC).

Regulation 45 Restrictions on contracting out

Regulation 45 prohibits the exclusion or limiting of the operation of any provision in these Regulations unless these Regulations provide for an agreement to have that effect. This regulation does not apply to any agreement to refrain from instituting or continuing proceedings before an industrial tribunal where the Labour Relations Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 concerning conciliation, or if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

Regulation 46 Guidance

Regulation 46 requires the Department for Employment and Learning to consult with the two sides of industry, to publish information and advice enabling those affected by the 2016 Regulations, to understand their respective rights and obligations under them.

Regulation 47 Agency workers not otherwise “workers”

Regulation 47 applies these Regulations to agency workers who, because of the absence of a worker’s contract, are not considered as “workers”.

Regulation 48 Crown employment

Regulation 48 permits these Regulations to apply to persons in Crown employment as they have effect in relation to other employment and other workers.

Regulation 49 Armed forces

Regulation 49 permits members of the armed forces to present a complaint to an industrial tribunal if they have first made a complaint under the service redress procedures which has not been withdrawn.

Regulation 50 Police service

Regulation 50 permits these Regulations to apply to persons holding the office of police constable, subject to the exclusions in regulation 22 where characteristics peculiar to the police inevitably conflict with the provisions of these Regulations.

Regulation 51 Non employed trainees

Regulation 51 treats persons receiving relevant training; otherwise than under a contract of employment as workers, and the training provider as the employer.

Regulation 52 Agricultural workers

Regulation 52 and Schedule 2 make provision for the leave year for workers employed in agriculture, except where different provision is made by a relevant agreement.

Regulation 53 Consequential Amendments

Regulation 53 makes a number of consequential amendments to legislation, replacing references for the Working Time Regulations (Northern Ireland) 1998 with references to these Regulations.

Regulation 54 Revocation and savings

Regulation 54 revokes The Working Time Regulations (Northern Ireland) 1998 and 10 amending statutory rules, and introduces saving provisions for amendments made by those Regulations to the Industrial Tribunals (Northern Ireland) Order 1996 and to the Employment Rights (Northern Ireland) Order 1996.

Schedule 1 Workforce Agreements

Schedule 1 defines a workforce agreement for the purposes of these Regulations. The agreement must be in writing and have effect for a specified period not exceeding five years. This Schedule also covers requirements for the election of representatives of the workforce.

Schedule 2 Workers Employed in Agriculture

Schedule 2 makes provision for the leave year for workers employed in agriculture, except where different provision is made by a relevant agreement.

Schedule 3 Enforcement

Schedule 3 provides for the enforcement authorities to enforce these Regulations through the appointment of inspectors. This Schedule also sets out the powers of the inspectors to enter premises and examine and take copies of records.

Inspectors are permitted to serve improvement notices or prohibition notices which can be appealed to an industrial tribunal.