
STATUTORY INSTRUMENTS

1999 No. 3323

**The Transnational Information and
Consultation of Employees Regulations 1999**

PART VII

PROTECTIONS FOR MEMBERS OF A EUROPEAN WORKS COUNCIL, ETC.

Right to time off for members of a European Works Council, etc.

25.—(1) An employee who is—

- (a) a member of a special negotiating body;
- (b) a member of a European Works Council;
- (c) an information and consultation representative; or
- (d) a candidate in an election in which any person elected will, on being elected, be such a member or representative,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such a member, representative or candidate.

(2) For the purposes of this regulation 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.

Right to remuneration for time off under regulation 25

26.—(1) An employee who is permitted to take time off under regulation 25 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) Chapter II of Part XIV of the 1996 Act (a week's pay) and, in relation to Northern Ireland, Chapter IV of Part I of the 1996 Order shall apply in relation to this regulation as they apply, respectively, in relation to section 62 of the 1996 Act and Article 90 of the 1996 Order.

(3) 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 is taken.

(4) 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 normal 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 (5) as are appropriate in the circumstances.

(5) The considerations referred to in paragraph (4)(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.
- (6) 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”).
- (7) Any contractual remuneration paid to an employee in respect of a period of time off under regulation 25 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.

Right to time off: complaints to tribunals

27.—(1) An employee may present a complaint, in Great Britain to an employment tribunal and in Northern Ireland to an industrial tribunal, that his employer—

- (a) has unreasonably refused to permit him to take time off as required by regulation 25; or
 - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under regulation 26.
- (2) A tribunal shall not consider a complaint under this regulation 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 a tribunal finds a complaint under this regulation well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under regulation 26 if the employer 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 regulation 26, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.

Unfair dismissal

28.—(1) An employee who is dismissed and to whom paragraph (2) or (5) applies shall be regarded, if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in, respectively, paragraph (3) or (6), as unfairly dismissed for the purposes of Part X of the 1996 Act and of Part XI of the 1996 Order.

- (2) This paragraph applies to an employee who is—
- (a) a member of a special negotiating body;
 - (b) a member of a European Works Council;
 - (c) an information and consultation representative; or
 - (d) a candidate in an election in which any person elected will, on being elected, be such a member or representative.

(3) The reason is that—

- (a) the employee performed any functions or activities as such a member, representative or candidate; or
- (b) the employee or a person acting on his behalf made a request to exercise an entitlement conferred on the employee by regulation 25 or 26;

or proposed to do so.

(4) The reason in paragraph (3)(a) does not apply where the reason (or principal reason) for the dismissal is that in the performance, or purported performance, of the employee's functions or activities he has disclosed any information or document in breach of the duty in regulation 23(1), unless the employee reasonably believed the disclosure to be a "protected disclosure" within the meaning given to that expression by section 43A of the 1996 Act or, as the case may be, by Article 67A of the 1996 Order.

(5) This paragraph applies to any employee whether or not he is an employee to whom paragraph (2) applies.

(6) The reasons are that the employee—

- (a) took, or proposed to take, any proceedings before an employment tribunal or industrial tribunal to enforce a right or secure an entitlement conferred on him by these Regulations;
- (b) exercised, or proposed to exercise, any entitlement to apply or complain to the Appeal Tribunal or the CAC, or in Northern Ireland the Industrial Court, conferred by these Regulations;
- (c) requested, or proposed to request, information in accordance with regulation 7;
- (d) acted with a view to securing that a special negotiating body, a European Works Council or an information and consultation procedure did or did not come into existence;
- (e) indicated that he supported or did not support the coming into existence of a special negotiating body, a European Works Council or an information and consultation procedure;
- (f) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body or of a European Works Council or an information and consultation representative;
- (g) influenced or sought to influence the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
- (h) voted in such a ballot;
- (i) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or
- (j) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (i).

(7) It is immaterial for the purposes of paragraph (6)(a)—

- (a) whether or not the employee has the right; or
- (b) whether or not the right has been infringed;

but for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

Subsidiary provisions relating to unfair dismissal: Great Britain

29.—(1) In section 105 of the 1996 Act (redundancy as unfair dismissal) in subsection (1) (c) (which requires one of a specified group of subsections to apply for a person to be treated

as unfairly dismissed)(1) there shall be inserted “or (7D)” immediately before “applies” and after subsection (7C) there shall be inserted—

“(7D) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation).”.

(2) In section 108(2) of the 1996 Act (exclusion of right: qualifying period of employment) in subsection (3) (cases where no qualifying period of employment is required)(3) the word “or” at the end of paragraph (gh) shall be omitted and after paragraph (h) there shall be inserted—

“or

(hh) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation) applies.”.

(3) In section 109 of the 1996 Act (exclusion of right: upper age limit) in subsection (2) (cases where upper age limit does not apply)(4) the word “or” at the end of paragraph (gh) shall be omitted and after paragraph (h) there shall be inserted—

“or

(hh) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation) applies.”.

Subsidiary provisions relating to unfair dismissal: Northern Ireland

30.—(1) In Article 137(5) of the 1996 Order (redundancy as unfair dismissal) in paragraph (1) (c) (which requires one of a specified group of paragraphs to apply for a person to be treated as unfairly dismissed) for “(7A)” there shall be substituted “(7B)” and after paragraph (7A) there shall be inserted—

“(7B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation).”.

(2) In Article 140(6) of the 1996 Order (exclusion of right: qualifying period of employment) in paragraph (3) (cases where no qualifying period of employment is required)(7) the word “or” at the end of sub-paragraph (h) shall be omitted and after sub-paragraph (j) there shall be inserted—

“or

(k) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation) applies.”.

(1) Section 105 has been amended on a number of occasions to specify additional circumstances in which an employee dismissed by reason of redundancy is to be regarded as unfairly dismissed.

(2) Section 108(1) was amended by S.I.1999/1436, Article 3.

(3) Section 108(3) has been amended on a number of occasions to specify additional cases in which no qualifying period of employment is required.

(4) Section 109(2) has been amended on a number of occasions to specify additional cases where the upper age limit does not apply.

(5) Article 137 has been amended on a number of occasions to specify additional circumstances in which an employee dismissed by reason of redundancy is to be regarded as unfairly dismissed.

(6) Article 140(1) was amended by S.R. 1999 No. 277, Article 3.

(7) Article 140(3) has been amended on a number of occasions to specify additional cases in which no qualifying period of employment is required.

(3) In Article 141 of the 1996 Order (exclusion of right: upper age limit) in paragraph (2) (cases where upper age limit does not apply)(8) the word “or” at the end of sub-paragraph (h) shall be omitted and after sub-paragraph (j) there shall be inserted—

“or

- (k) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation) applies.”.

Detriment

31.—(1) An employee to whom paragraph (2) or (5) applies has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer, done on a ground specified in, respectively, paragraph (3) or (6).

(2) This paragraph applies to an employee who is—

- (a) a member of a special negotiating body,
- (b) a member of a European Works Council,
- (c) an information and consultation representative, or
- (d) a candidate in an election in which any person elected will, on being elected, be such a member or representative.

(3) The ground is that—

- (a) the employee performed any functions or activities as such a member, representative or candidate, or
- (b) the employee or a person acting on his behalf made a request to exercise an entitlement conferred on the employee by regulation 25 or 26;

or proposed to do so.

(4) The ground in paragraph (3)(a) does not apply where the ground for the subjection to detriment is that in the performance, or purported performance, of the employee’s functions or activities he has disclosed any information or document in breach of the duty in regulation 23(1), unless the employee reasonably believed the disclosure to be a “protected disclosure” within the meaning given to that expression by section 43A of the 1996 Act or, as the case may be, Article 67A of the 1996 Order.

(5) This paragraph applies to any employee, whether or not he is an employee to whom paragraph (2) applies.

(6) The grounds are that the employee—

- (a) took, or proposed to take, any proceedings before an employment tribunal or industrial tribunal to enforce a right or secure an entitlement conferred on him by these Regulations;
- (b) exercised, or proposed to exercise, any entitlement to apply or complain to the Appeal Tribunal, the CAC, or in Northern Ireland the Industrial Court, conferred by these Regulations;
- (c) requested, or proposed to request, information in accordance with regulation 7;
- (d) acted with a view to securing that a special negotiating body, a European Works Council or an information and consultation procedure did or did not come into existence;
- (e) indicated that he supported or did not support the coming into existence of a special negotiating body, a European Works Council or an information and consultation procedure;

(8) Article 141(2) has been amended on a number of occasions to specify additional cases where the upper age limit does not apply.

- (f) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body or of a European Works Council or an information and consultation representative;
 - (g) influenced or sought to influence the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
 - (h) voted in such a ballot;
 - (i) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or
 - (j) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (i).
- (7) It is immaterial for the purposes of paragraph (6)(a)—
- (a) whether or not the employee has the right; or
 - (b) whether or not the right has been infringed;
- but for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

Detriment: enforcement and subsidiary provisions

32.—(1) An employee may present a complaint, in Great Britain to an employment tribunal and in Northern Ireland to an industrial tribunal, that he has been subjected to a detriment in contravention of regulation 31.

(2) The provisions of—

- (a) sections 48(2) to (4) and 49 of the 1996 Act⁽⁹⁾ (complaints to employment tribunals and remedies); or
- (b) in relation to Northern Ireland, Articles 71(2) to (4) and 72 of the 1996 Order⁽¹⁰⁾ (complaints to industrial tribunals and remedies);

shall apply in relation to a complaint under this regulation as they apply in relation to a complaint under section 48 of that Act or Article 71 of that Order (as the case may be), but taking references in those provisions to the employer as references to the employer within the meaning of regulation 31(1) above.

(3) Regulation 31 does not apply where the detriment in question amounts to dismissal.

Conciliation

33.—(1) In section 18 of the Employment Tribunals Act 1996 (conciliation) in subsection (1) (which specifies the proceedings and claims to which the section applies)⁽¹¹⁾—

- (a) at the end of paragraph (f), the word “or” shall be omitted; and
- (b) after paragraph (ff), there shall be inserted—

“or

- (g) under regulation 27 or 32 of the Transnational Information and Consultation of Employees Regulations 1999.”.

⁽⁹⁾ Sections 48 and 49 were amended respectively by sections 1(2)(b) and 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8); there have also been amendments to the sections that are not relevant to these Regulations.

⁽¹⁰⁾ There have been amendments to Articles 71 and 72 that are not relevant to these Regulations.

⁽¹¹⁾ 1996 c. 17. Section 18(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

(2) In Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation) in paragraph (1) (which specifies the proceedings and claims to which the Article applies)(12)—

(a) at the end of sub-paragraph (e), the word “or” shall be omitted; and

(b) after sub-paragraph (f) there shall be inserted—

“or

(g) under regulation 27 or 32 of the Transnational Information and Consultation of Employees Regulations 1999.”.

(12) S.I. 1996/1921 (N.I. 18). Article 20(1) has been amended on a number of occasions to specify additional proceedings and claims to which the Article applies.