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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART VII

#### TIME OFF WORK

##### *Occupational pension scheme trustees*

##### **Right to time off for pension scheme trustees**

**86.**—(1) The employer in relation to a relevant occupational pension scheme shall permit an employee of his who is a trustee of the scheme to take time off during the employee's working hours for the purpose of—

- (a) performing any of his duties as such a trustee, or 88
- (b) undergoing training relevant to the performance of those duties.

(2) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, 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) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or for undergoing the particular training, and
- (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

[<sup>F1</sup>(2A) This Article applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).]

(3) In this Article—

- (a) “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993) established under a trust, and
- (b) references to the employer, in relation to such a scheme, are to an employer of persons in the description<sup>F2</sup> or category of employment to which the scheme relates<sup>F3</sup>, and]

[<sup>F3</sup>(c) references to training are to training on the employer's premises or elsewhere.]

(4) 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.

<b>F1</b>	1999 NI 11
<b>F2</b>	prosp. rep. by 2005 NI 1
<b>F3</b>	1998 NI 15

## **Right to payment for time off under Article 86**

**87.**—(1) An employer who permits an employee to take time off under Article 86 shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in paragraph (3) are—

- (a) those of the employee concerned, or
- (b) if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an 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 86 goes towards discharging any liability of the employer under paragraph (1) in respect of that period; and, conversely, any payment 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**

**88.**—(1) An employee may present a complaint to an industrial tribunal that his employer—

- (a) has failed to permit him to take time off as required by Article 86, or
- (b) has failed to pay him in accordance with Article 87.

(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 date when the failure occurred, 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.

[<sup>F4</sup>(2A) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2)(a).]

(3) Where an industrial tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the employee.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the employer's default in failing to permit time off to be taken by the employee, and
- (b) any loss sustained by the employee which is attributable to the matters complained of.

(5) Where on a complaint under paragraph (1)(b) an industrial tribunal finds that an employer has failed to pay an employee in accordance with Article 87, it shall order the employer to pay the amount which it finds to be due.

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**Changes to legislation:** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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**F4** Art. 88(2A) inserted (27.1.2020) by Employment Act (Northern Ireland) 2016 (c. 15), s. 29(2), **Sch. 2 para. 28**; S.R. 2020/1, art. 2(n)

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Act applied with modifications by [S.R. 2023/156 reg. 15](#)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Pt. 7A inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 1](#)
- Ch. 5 inserted by [2022 c. 27 \(N.I.\) s. 1\(1\)](#)
- art. 21(4B) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 2](#)
- art. 23(1)(zza) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 3](#)
- art. 70F inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 4](#)
- art. 70G inserted by [2020 c. 7 Sch. 7 para. 20](#)
- art. 71(1C) inserted by [2020 c. 7 Sch. 7 para. 21\(a\)](#)
- art. 72(8) inserted by [2020 c. 7 Sch. 7 para. 22\(b\)](#)
- art. 85ZS(3)(a)-(c) substituted for words by [2022 c. 18 \(N.I.\) Sch. 3 para. 47\(4\)](#)
- art. 95F(5A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 32](#)
- art. 135E inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 6](#)
- art. 135G inserted by [2020 c. 7 Sch. 7 para. 25](#)
- art. 137(6D) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 7](#)
- art. 137(7N) inserted by [2020 c. 7 Sch. 7 para. 26\(b\)](#)
- art. 140(3)(fj) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 8](#)
- art. 140(3)(fl) inserted by [2020 c. 7 Sch. 7 para. 27](#)
- art. 143(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 9](#)
- art. 144(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 10](#)