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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

##### *[<sup>F1</sup>Trade union duties and activities*

**F1** 1998 NI 15

#### **Right to time off for carrying out trade union duties**

**92.**—(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with—

- (a) negotiations with the employer related to or connected with matters falling within Article 96(1) of the 1992 Order in relation to which the trade union is recognised by the employer, or
  - (b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union<sup>[<sup>F2</sup>, or]</sup>
    - <sup>[</sup> receipt of information from the employer and consultation by the employer under Article <sup>F2</sup>(c) 216 or under the Transfer of Undertakings (Protection of Employment) Regulations 1981
    - <sup>[</sup> negotiations with a view to entering into an agreement under regulation 9 of the Transfer <sup>F3</sup>(d) of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer, or
  - (e) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation <sup>[<sup>F4</sup>;]</sup>
    - <sup>[</sup> negotiations with a view to entering into an agreement under regulation 9 of the Service <sup>F5</sup>(f) Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 that applies to employees of the employer, or
  - (g) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation.]
- (2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations—
- (a) relevant to the carrying out of such duties as are mentioned q in paragraph (1), and
  - (b) approved by the Northern Ireland Committee of the Irish Congress of Trade Unions or by the independent trade union of which he is an official.

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(3) 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 to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.

(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.

- F2** SR 1999/432
- F3** Art. 92(1)(d)(e) inserted (6.4.2006) by virtue of [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 9(4), **Sch. 1 para. 6** (with reg. 21(1), Sch. 1 para. 3)
- F4** Word in art. 92(1)(e) substituted (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 9(4)**
- F5** Art. 92(1)(f)(g) inserted (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 9(4)**

**Modifications etc. (not altering text)**

- C1** Art. 92(3) applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 para. 9(6)** (with reg. 50)
- C2** Art. 92(4) applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 para. 9(6)** (with reg. 50)

**[F6] Time off for union learning representatives**

**92A.—(1)** An employer shall permit an employee of his who is—

- (a) a member of an independent trade union recognised by the employer, and
- (b) a learning representative of the trade union,

to take time off during his working hours for any of the following purposes.

(2) The purposes are—

- (a) carrying on any of the following activities in relation to qualifying members of the trade union—
  - (i) analysing learning or training needs,
  - (ii) providing information and advice about learning or training matters,
  - (iii) arranging learning or training, and
  - (iv) promoting the value of learning or training,
- (b) consulting the employer about carrying on any such activities in relation to such members of the trade union,
- (c) preparing for any of the things mentioned in paragraphs (a) and (b).

(3) Paragraph (1) only applies if—

- (a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and
- (b) the training condition is met in relation to him.

(4) The training condition is met if—

- (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in paragraph (2), and the trade union has given the employer notice in writing of that fact,

- (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
  - (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.
- (5) Only one notice under paragraph (4)(b) may be given in respect of any one employee.
- (6) References in paragraph (4) to sufficient training to carry out the activities mentioned in paragraph (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by the Agency or the Department.
- (7) If an employer is required to permit an employee to take time off under paragraph (1), he shall also permit the employee to take time off during his working hours for the following purposes—
- (a) undergoing training which is relevant to his functions as a learning representative, and
  - (b) where the trade union has in the last six months given the employer notice under paragraph (4)(b) in relation to the employee, undergoing such training as is mentioned in paragraph (4)(a).
- (8) 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 to any relevant provision of a Code of Practice issued by the Agency or the Department.
- (9) In paragraph (2)(a), the reference to qualifying members of the trade union is to members of the trade union—
- (a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
  - (b) in relation to whom it is the function of the union learning representative to act as such.
- (10) For the purposes of this Article—
- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules;
  - (b) 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.
- (11) The Department may by order amend the preceding provisions of this Article for the purpose of changing the purposes for which an employee may take time off under this Article.]

F6 2003 NI 15

### **Right to remuneration for time off under Article 92**

**93.**—(1) An employer who permits an employee to take time off under Article 92<sup>[F7]</sup> or 92A] 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

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(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 92<sup>[F7]</sup> or 92A] 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.

**F7** 2003 NI 15

**Modifications etc. (not altering text)**

**C3** Art. 93 applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 para. 9(6)** (with reg. 50)

**Right to time off for trade union activities**

**94.**—(1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in—

- (a) any activities of the union, and
- (b) any activities in relation to which the employee is acting as a representative of the union.

(2) The right conferred by paragraph (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.

[  
<sup>F8</sup>(2A) The right conferred by paragraph (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.

(2B) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of having access to services provided by a person in his capacity as a learning representative of the trade union.

(2C) Paragraph (2B) only applies if the learning representative would be entitled to time off under paragraph (1) of Article 92A for the purpose of carrying on in relation to the employee activities of the kind mentioned in paragraph (2) of that Article.]

(3) 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 to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.

(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.

[  
<sup>F8</sup>(5) For the purposes of this Article—

- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and

- (b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in Article 92A(2) in that capacity.]

**F8** 2003 NI 15

### Complaints to industrial tribunals

- 95.**—(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 92<sup>F9</sup>, 92A] or 94, or
  - (b) has failed to pay him in accordance with Article 93.
- (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>F10</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
- (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 93, it shall order the employer to pay the amount which it finds to be due.]

**F9** 2003 NI 15

**F10** Art. 95(2A) inserted (27.1.2020) by Employment Act (Northern Ireland) 2016 (c. 15), s. 29(2), **Sch. 2 para. 31**; S.R. 2020/1, art. 2(n)

#### Modifications etc. (not altering text)

**C4** Art. 95 applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 9(6)** (with reg. 50)

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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](#)