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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**

*Public duties*

**Right to time off for public duties**

**78.**—(1) An employer shall permit an employee of his who is a justice of the peace to take time off during the employee's working hours for the purpose of performing any of the duties of his office.

(2) An employer shall permit an employee of his who is a member of—

- (a) a district council,
- (b) a statutory tribunal,
- (c) a relevant prison visiting authority,
- (d) a relevant health body, or
- (e) a relevant education body,

to take time off during the employee's working hours for the purposes specified in paragraph (3).

(3) The purposes referred to in paragraph (2) are—

- (a) attendance at a meeting of the body or any of its committees or sub-committees, and
- (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.

(4) The amount of time off which an employee is to be permitted to take under this Article, and 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,

- (a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty,
- (b) how much time off the employee has already been permitted under this Article or Article 92 or 94, and
- (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

(5) In paragraph (2)(c) "a relevant prison visiting authority" means—

- (a) a board of visitors appointed under section 10 of the Prison Act (Northern Ireland) 1953, or
- (b) a visiting committee appointed under section 3 of the Treatment of Offenders Act (Northern Ireland) 1968.

- (6) In paragraph (2)(d) “a relevant health body” means—
  - (a) a Health and Social Services Board; or
  - (b) a Health and Social Services Trust.
- (7) In paragraph (2)(e) “a relevant education body” means—
  - (a) an education and library board;
  - (b) the Council for Catholic Maintained Schools;
  - (c) the Northern Ireland Council for the Curriculum, Examinations and Assessment,
  - (d) the Board of Governors of a grant-aided school,
  - (e) the governing body of an institution of further education, or
  - (f) the managers of a college of education.
- (8) The Department may by order—
  - (a) modify the provisions of paragraphs (1) and (2) and (5) to (7) by adding any office or body, removing any office or body or altering the description of any office or body, or
  - (b) modify the provisions of paragraph (3).
- (9) 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.

#### **Complaints to industrial tribunals**

- 79.**—(1) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by Article 78.
- (2) An industrial tribunal shall not consider a complaint under this Article that an employer has failed to permit an employee to take time off unless it is presented—
  - (a) before the end of the period of three months beginning with the date on which 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.
- (3) Where an industrial tribunal finds a complaint under this Article 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 to which the complaint relates.

#### *Looking for work and making arrangements for training*

#### **Right to time off to look for work or arrange training**

- 80.**—(1) An employee who is given notice of dismissal by reason of redundancy is entitled to be permitted by his employer to take reasonable time off during the employee’s working hours before the end of his notice in order to—
  - (a) look for new employment, or

(b) make arrangements for training for future employment.

(2) An employee is not entitled to take time off under this Article unless, on whichever is the later of—

(a) the date on which the notice is due to expire, and

(b) the date on which it would expire were it the notice required to be given by Article 118(1),

he will have been (or would have been) continuously employed for a period of two years or more.

(3) 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.

### **Right to remuneration for time off under Article 80**

**81.**—(1) An employee who is permitted to take time off under Article 80 is entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.

(2) 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 notice of dismissal was given.

(3) 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 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 notice was given.

(4) If an employer unreasonably refuses to permit an employee to take time off from work as required by Article 80, the employee is entitled to be paid an amount equal to the remuneration to which he would have been entitled under paragraph (1) if he had been permitted to take the time off.

(5) The amount of an employer's liability to pay remuneration under paragraph (1) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.

(6) A right to any amount under paragraph (1) or (4) 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 Article 80 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.

### **Complaints to industrial tribunals**

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

(a) has unreasonably refused to permit him to take time off as required by Article 80, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 81(1) or (4).

(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 on which it is alleged that 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 an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall—

- (a) make a declaration to that effect, and
- (b) order the employer to pay to the employee the amount which it finds due to him.

(4) The amount which may be ordered by a tribunal to be paid by an employer under paragraph (3) (or, where the employer is liable to pay remuneration under Article 81, the aggregate of that amount and the amount of that liability) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.

#### *Ante-natal care*

#### **Right to time off for ante-natal care**

**83.**—(1) An employee who—

- (a) is pregnant, and
- (b) has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care,

is entitled to be permitted by her employer to take time off during the employee's working hours in order to enable her to keep the appointment.

(2) An employee is not entitled to take time off under this Article to keep an appointment unless, if her employer requests her to do so, she produces for his inspection—

- (a) a certificate from a registered medical practitioner, registered midwife or registered health visitor stating that the employee is pregnant, and
- (b) an appointment card or some other document showing that the appointment has been made.

(3) Paragraph (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with paragraph (1).

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with her contract of employment, the employee is required to be at work.

#### **Right to remuneration for time off under Article 83**

**84.**—(1) An employee who is permitted to Article 83 is entitled to be paid remuneration by period of absence at the appropriate hourly rate. take time off under her employer for the

(2) 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 off is taken.

(3) 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 (4) as are appropriate in the circumstances.

- (4) The considerations referred to in paragraph (3)(b) are—
- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract, and
  - (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.
- (5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under her contract of employment (“contractual remuneration”).
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 83 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.

### **Complaints to industrial tribunals**

- 85.**—(1) An employee may present a complaint to an industrial tribunal that her employer—
- (a) has unreasonably refused to permit her to take time off as required by Article 83, or
  - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 84.
- (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 of the appointment concerned, 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 an industrial tribunal finds a complaint under this Article 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 she would have been entitled under Article 84 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 she is entitled under Article 84, the tribunal shall also order the employer to pay to the employee the amount which it finds due to her.

### *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.
- (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 or category of employment to which the scheme relates.
- (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.

#### **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.
- (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.

#### *Employee representatives*

#### **Right to time off for employee representatives**

- 89.**—(1) An employee who is—
- (a) an employee representative for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
  - (b) a candidate in an election in which any person elected will, on being elected, be such an employee 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 an employee representative or candidate.
- (2) 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.

#### **Right to remuneration for time off under Article 89**

- 90.**—(1) An employee who is permitted to take time off under Article 89 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.
- (2) 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 off is taken.
- (3) 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 (4) as are appropriate in the circumstances.
- (4) The considerations referred to in paragraph (3)(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.
- (5) 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”).
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 89 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.

### **Complaints to industrial tribunals**

- 91.**—(1) An employee may present a complaint to an industrial tribunal that his employer—
- (a) has unreasonably refused to permit him to take time off as required by Article 89, or
  - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 90.
- (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 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 an industrial tribunal finds a complaint under this Article 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 Article 90 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 Article 90, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.

### *Trade union duties and activities*

#### **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.
- (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.

(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.

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

**93.**—(1) An employer who permits an employee to take time off under Article 92 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 92 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.

### **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.

(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.

### **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 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.
- (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.