STATUTORY INSTRUMENTS

1997 No. 2779 (N.I. 20)

The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997 [F1]

- - - - - - *26th November 1997*

F1 functions transf. by SR 1999/481

Introductory

Title and commencement

1. This Order may be cited as the Shops (Sunday Trading &c.) (Northern Ireland) Order 1997 and shall come into operation on the expiration of 7 days from the day on which it is made.

Interpretation

2.—(1) Subject to Article 9(2), the Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"the commencement date" means the day on which this Order comes into operation;

"the Department" means the Department of Health and Social Services;

"intoxicating liquor" has the same meaning as in the Licensing (Northern Ireland) Order 1996;

"large shop" means a shop which has a relevant floor area exceeding 280 square metres;

"relevant floor area", in relation to a shop, means the internal floor area of so much of the shop as consists of or is comprised in a building, but excluding any part of the shop which, throughout the week ending with the Sunday in question, is used neither for the serving of customers in connection with the sale of goods nor for the display of goods;

"retail customer" means a person who purchases goods retail;

"retail sale" means any sale other than a sale for use or resale in the course of a trade or business, and references to retail purchase shall be construed accordingly;

"sale of goods" does not include—

(a) the sale of meals, refreshments or intoxicating liquor for consumption on the premises on which they are sold; or

(b) the sale of meals or refreshments prepared to order for immediate consumption off those premises;

"shop" (except in Schedule 2) means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods.

Opening of large shops on Sunday

Large shops not to open on Sunday except in accordance with Articles 4, 5 and 6

3.—(1) Subject to Articles 4, 5 and 6, a large shop shall not be open on Sunday for the serving of retail customers.

(2) If paragraph (1) is contravened in relation to a shop, the occupier of the shop shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.

(3) Where a person is charged with having contravened paragraph (1), in relation to a large shop which was permitted by virtue of the exemption conferred by paragraph (1) of Article 5 to be open for the serving of retail customers on the Sunday in question during the hours mentioned in that paragraph, by reason of his having served a retail customer after the end of those hours, it shall be a defence to prove that the customer was in the shop before that time and left not later than half an hour after that time.

Exemption for certain kinds of large shop

4.—(1) Article 3(1) does not apply in relation to—

(a) any shop which is at a farm and where the trade or business carried on consists wholly or mainly of the sale of produce from that farm;

(b) any shop where the trade or business carried on consists wholly or mainly of the sale of intoxicating liquor;

(c) any shop where the trade or business carried on consists wholly or mainly of the sale of any one or more of the following—

(i) motor supplies and accessories; and

(ii) cycle supplies and accessories;

(d) any shop which—

(i) is a registered pharmacy; and

(ii) is not open for the retail sale of any goods other than medicinal products and medical and surgical appliances;

(e) any shop which—

(i) is at an airport; and

(ii) is situated in a part of the airport ordinarily used by persons travelling by air to or from the airport;

(f) any shop in a railway station or bus station;

(g) any shop at a service area within the meaning of the Roads (Northern Ireland) Order 1993;

(h) any petrol filling station;

(i) any shop which is not open for the retail sale of any goods other than food, stores or other necessaries required by any person for a vessel or aircraft on its arrival at, or immediately before its departure from, a port, harbour or airport; and

(j) any stand used for the retail sale of goods during the course of an exhibition.

(2) In determining whether a shop falls within paragraph (1)(a), (b) or (c), regard shall be had to the nature of the trade or business carried on there on weekdays as well as to the nature of the trade or business carried on there on Sunday.

(3) In this Article—

"medicinal product" and "registered pharmacy" have the same meaning as in the Medicines Act 1968; and

"Stand", in relation to an exhibition, means any platform, structure, space or other area provided for exhibition purposes.

Permitted Sunday opening hours for large shops

5.—(1) Article 3(1) does not apply in relation to a shop during the period between 1 p.m. and 6 p.m. on a Sunday.

(2) The exemption conferred by paragraph (1) does not apply where the Sunday is Easter Day or Christmas Day.

Additional permitted Sunday opening for large shops in holiday resorts

6.—(1) Where a notice under this Article has effect in relation to a shop, Article 3(1) does not apply in relation to the shop on any Sunday specified in the notice; and any exemption conferred by this paragraph is in addition to (and not in substitution for) the exemption conferred by Article 5(1).

(2) A person who is, or proposes to become, the occupier of a large shop situated in an area designated under paragraph (9) as a holiday resort may as respects any calendar year give notice to the district council for the district in which the shop is situated specifying (subject to paragraph (3)) the Sundays in that year on which Article 3(1) is not to apply in relation to the shop.

(3) A notice under this Article shall not specify—

(a) a Sunday occurring before 1st March or after 30th September in any calendar year;

(b) Easter Day; or

(c) more than 18 Sundays in any calendar year.

(4) The occupier of a shop in respect of which notice has been given under this Article may, by a subsequent notice—

(a) specify (subject to paragraph (3)) Sundays different to those specified in the earlier notice; or

(b) cancel the earlier notice.

(5) A notice under this Article—

(a) shall not take effect until the end of the period of 14 days beginning with the day on which it is given, unless the district council agrees that it is to take effect at the end of a shorter period;

(b) shall cease to have effect when superseded by a subsequent notice as mentioned in paragraph (4)(a) or cancelled as mentioned in paragraph (4)(b).

(6) Every district council shall keep a register of shops in its district in respect of which a notice under this Article has effect.

(7) In relation to every such shop, the register shall contain particulars of—

(a) the name (if any) and address of the shop; and

(b) the Sundays specified in the notice under this Article.

(8) Any register kept under this Article—

(a) shall be open to inspection by members of the public at all reasonable times; and

(b) may be kept by means of a computer.

(9) For the purposes of this Article, a district council may by resolution—

(a) designate any area in its district as a holiday resort;

(b) revoke any designation made by it under sub-paragraph (a).

(10) Any resolution passed by a district council under paragraph (9) shall take effect from a date specified in the resolution which must be a date at least one month after the date on which the resolution is passed.

(11) Before making or revoking any designation under paragraph (9), a district council shall consult persons appearing to the council to be likely to be affected by the proposed designation or revocation (whether as the occupiers of shops or as local residents) or persons appearing to the council to represent such persons.

(12) Where a district council makes or revokes a designation under paragraph (9), it shall publish notice of the designation or revocation in such manner as it considers appropriate.

Loading and unloading at large shops on Sunday morning

7.—(1) A district council may by resolution designate its district as a loading control district for the purposes of this Article with effect from a date specified in the resolution, which must be a date at least one month after the date on which the resolution is passed.

(2) A district council may by resolution revoke any designation made by it under this Article.

(3) Before making or revoking any designation under this Article, a district council shall consult persons appearing to the council to be likely to be affected by the proposed designation or revocation (whether as the occupiers of shops or as local residents) or persons appearing to the council to represent such persons.

(4) Where a district council makes or revokes a designation under this Article, it shall publish notice of the designation or revocation in such manner as it considers appropriate.

(5) Schedule 1 (which imposes restrictions on loading and unloading on Sunday before 9 a.m. at large shops in loading control districts) shall have effect.

Enforcement

8.—(1) It shall be the duty of every district council to enforce within its district the preceding provisions of this Order.

(2) For the purposes of its duty under paragraph (I), a district council shall appoint inspectors.

(3) An inspector appointed by a district council under paragraph (2) shall, on producing if so required some duly authenticated document showing his authority, have a right at all reasonable hours—

(a) to enter any premises within the district of the council, with or without a constable, for the purpose of ascertaining whether there is or has been on the premises any contravention of the preceding provisions of this Order;

(b) to require the production of, inspect and take copies of any records (in whatever form they are held) relating to any trade or business carried on on the premises which appear to him to be relevant for the purpose mentioned in sub-paragraph (a);

(c) where those records are kept by means of a computer, to require the records to be produced in a form in which they may be taken away; and

(d) to take such measurements and photographs as he considers necessary for the purpose mentioned in sub-paragraph (a).

(4) Any person who intentionally obstructs an inspector appointed under paragraph (2) acting in the execution of his duty shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences

9.—(1) Where the commission by any person of an offence under this Order is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) For the purposes of this Order, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words "the liability of whose members is limited" and, where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) In any proceedings for an offence under this Order it shall, subject to paragraph (4), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(4) If in any case the defence provided by paragraph (3) involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, at least 7 days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Other provisions relating to Sunday trading

Construction of certain leases and agreements

10.—(1) Where any lease or agreement (however worded) entered into before the commencement date has the effect of requiring the occupier of a shop to keep the shop open for the serving of retail customers—

(a) during normal business hours; or

(b) during hours to be determined otherwise than by or with the consent of the occupier,

that lease or agreement shall not be regarded as requiring, or as enabling any person to require, the occupier to open the shop on Sunday for the serving of retail customers.

(2) Paragraph (1) shall not affect any lease or agreement—

(a) to the extent that it relates specifically to Sunday and would (apart from this Article) have the effect of requiring Sunday trading of a kind which before the commencement date would have been lawful by virtue of any provision of Part I of the Shops Act (Northern Ireland) 1946; or

(b) to the extent that it is varied by agreement after the commencement date.

Rights of shop workers as respects Sunday working

11 [F2]**.** Schedule 2 (rights of shop workers as respects Sunday working) shall have effect.

F2 functions transf. by SR 1999/481

Exclusion of Sunday Observance Act (Ireland) 1695

12. The Sunday Observance Act (Ireland) 1695 does not apply to any person—

(a) by reason of his being the occupier of, or a person employed to work in or about, a shop which is open on Sunday for the serving of retail customers; or

(b) by reason of his otherwise being, or doing anything, in or about a shop which is open on Sunday for the serving of retail customers.

Repeal of provisions of the Shops Act (Northern Ireland) 1946

Repeal of provisions of the Shops Act (Northern Ireland) 1946

13. In the Shops Act (Northern Ireland) 1946 the following provisions, namely—

(a) sections 1 to 5 (closing hours of shops); and

(b) Part II (conditions of employment),

shall cease to have effect.

Supplementary

Amendments and repeals

Para. (1)—Repeals

(2) The Department may by order subject to negative resolution—

(a) repeal any provision of a local Act passed before the commencement date if it appears to the Department that the provision is inconsistent with, or has become unnecessary in consequence of, any provision of this Order; and

(b) amend any provision of such a local Act if it appears to the Department that the provision requires amendment in consequence of any provision of this Order or any repeal made by virtue of sub-paragraph (a).

(3) Before making an order under paragraph (2) repealing or amending any provision of a local Act, the Department shall consult each district council which it considers would be affected by the repeal or amendment of that provision.

SCHEDULES

SCHEDULE 1

Article 7(5).

LOADING AND UNLOADING AT LARGE SHOPS ON SUNDAY MORNING

Shops to which Schedule applies

1.—(1) Subject to sub-paragraph (2), this Schedule applies to any large shop situated in a district designated as a loading control district under Article 7.

(2) This Schedule does not apply to a shop in relation to which Article 3(1) does not apply by virtue of an exemption conferred by Article 4(1).

Consent required for early Sunday loading and unloading

2. The occupier of a shop to which this Schedule applies shall not load or unload, or permit any other person to load or unload, goods from a vehicle at the shop before 9 a.m. on Sunday in connection with the trade or business carried on in the shop, unless the loading or unloading is carried on—

(a) with the consent of the district council for the district in which the shop is situated granted under this Schedule; and

(b) in accordance with any conditions subject to which that consent is granted.

3.—(1) A consent under this Schedule may be granted subject to such conditions as the district council considers appropriate.

(2) The district council may at any time vary the conditions subject to which a consent is granted, and shall give notice of the variation to the person to whom the consent was granted.

Application for consent

4. An application for a consent under this Schedule shall be made in writing and shall contain such information as the district council may reasonably require.

5. An applicant for a consent under this Schedule shall pay such reasonable fee in respect of his application as the district council may determine.

6.—(1) Where an application is duly made to the district council for a consent under this Schedule, the council shall grant the consent unless it is satisfied that the loading or unloading of goods from vehicles before 9 a.m. on Sunday at the shop to which the application relates, in connection with the trade or business carried on at the shop, has caused, or would be likely to cause, undue annoyance to local residents.

(2) The council shall determine the application and notify the applicant in writing of its decision within the period of 21 days beginning with the day on which the application is received by the council.

(3) In a case where a consent is granted, the notification under sub-paragraph (2) shall specify the conditions, if any, subject to which the consent is granted.

Revocation of consent

7. Where—

(a) the occupier of a shop in respect of which a consent under this Schedule is in force is convicted of an offence under paragraph 9 by reason of his failure to comply with the conditions subject to which the consent was granted; or

(b) the district council is satisfied that the loading or unloading authorised by virtue of a consent under this Schedule has caused undue annoyance to local residents,

the council may revoke the consent.

Publication of consent

8. Where a district council grants a consent under this Schedule, the council may cause a notice giving details of that consent to be published in a local newspaper circulating in its district.

Offence

9. A person who contravenes paragraph 2 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

SCHEDULE 2 [F3]

Article 11

RIGHTS OF SHOP WORKERS AS RESPECTS SUNDAY WORKING

F3 functions transf. by SR 1999/481

Interpretation

1.—(1) In this Schedule "shop worker" means an employee who, under his contract of employment, is or may be required to do shop work.

(2) In this Schedule "shop work" means work in or about a shop on a day on which the shop is open for the serving of customers.

(3) Subject to sub-paragraph (4), in this Schedule "shop" includes any premises where any retail trade or business is carried on.

(4) Where premises are used mainly for purposes other than those of retail trade or business and would not (apart from sub-paragraph (3)) be regarded as a shop, only such part of the premises as—

(a) is used wholly or mainly for the purposes of retail trade or e business; or

(b) is used both for the purposes of retail trade or business and for the purposes of wholesale trade and is used wholly or mainly for those two purposes considered together,

is to be regarded as a shop for the purposes of this Schedule.

(5) In sub-paragraph (4)(b) "wholesale trade" means the sale of goods for use or resale in the course of a business or the hire of goods for use in the course of a business.

(6) In this paragraph "retail trade or business" includes—

(a) the business of a barber or hairdresser;

(b) the business of hiring goods otherwise than for use in the course of a trade or business; and

(c) retail sales by auction,

but does not include catering business or the sale at theatres and places of amusement of programmes, catalogues and similar items.

(7) In sub-paragraph (6) "catering business" means—

(a) the sale of meals, refreshments or intoxicating liquor for consumption on the premises on which they are sold; or

(b) the sale of meals or refreshments prepared to order for immediate consumption off the premises.

(8) In this Schedule—

"notice period", in relation to an opted-out shop worker, has the meaning given by paragraph 7(3);

"opted-out", in relation to a shop worker, shall be construed in accordance with paragraph 7(1) and (2);

"opting-in notice", in relation to a shop worker, has the meaning given by paragraph 2(6);

"opting-out notice", in relation to a shop worker, has the meaning given by paragraph 6(2); and

"protected", in relation to a shop worker, shall be construed in accordance with paragraph 2(1) to (5).

(9) This Schedule shall be construed as one with the Employment Rights (Northern Ireland) Order 1996, referred to in this Schedule as "the Employment Rights Order".

(10) Chapter III of Part I of the Employment Rights Order (computation of period of continuous employment) shall have effect for the purposes of this Schedule as it has effect for the purposes of that Order.

Sub#paras. (11)#(12) rep. by 1999 NI 9

Protected shop workers

2.—(1) Subject to sub-paragraph (5), a shop worker is to be regarded as "protected" for the purposes of any provision of this Schedule if (and only if) sub-paragraph (2) or (3) applies to him.

(2) This sub-paragraph applies to a shop worker if—

(a) on the day before the commencement date, he was employed as a shop worker, but not to work only on Sunday;

(b) he has been continuously employed during the period beginning with that day and ending with the day which, in relation to the provision concerned, is the appropriate date; and

(c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.

(3) This sub-paragraph applies to any shop worker whose contract of employment is such that under it he—

(a) is not, and may not be, required to work on Sunday; and

(b) could not be so required even if the provisions of this Schedule were disregarded.

(4) Where on the day before the commencement date an employee's relations with his employer have ceased to be governed by a contract of employment, he shall be regarded as satisfying sub-paragraph (2)(a) if—

(a) that day fell in a week which counts as a period of employment with that employer under Article 8(2) or (3) of the Employment Rights Order or under regulations under Article 15 of that Order; and

(b) on the last day before the commencement date on which his relations with his employer were governed by a contract of employment, the employee was employed as a shop worker, but not to work only on Sunday.

(5) A shop worker is not a protected shop worker if—

(a) he has given his employer an opting-in notice on or after the commencement date; and

(b) after giving the notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.

(6) In this Schedule "opting-in notice", in relation to a shop worker, means written notice, signed and dated by the shop worker, in which the shop worker expressly states that he wishes to work on Sunday or that he does not object to Sunday working.

Contractual requirements relating to Sunday work

3.—(1) Any contract of employment under which a shop worker who satisfies paragraph 2(2)(a) was employed on the day before the commencement date is unenforceable to the extent that it—

(a) requires the shop worker to do shop work on Sunday on or after that date, or

(b) requires the employer to provide the shop worker with shop work on Sunday on or after that date.

(2) Subject to paragraph (3), any agreement entered into after the commencement date between a protected shop worker and his employer is unenforceable to the extent that it—

(a) requires the shop worker to do shop work on Sunday, or

(b) requires the employer to provide the shop worker with shop work on Sunday.

(3) Where, after giving an opting-in notice, a protected shop worker expressly agrees with his employer to do shop work on Sunday or on a particular Sunday (and so ceases to be protected), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.
Sub#para. (4) rep. by 1999 NI 9

(5) For the purposes of paragraph 2(2)(b), the appropriate date—

(a) in relation to sub-paragraphs (2) and (3), is the day on which the agreement is entered into;[F4]. . .

F4 1999 NI 9

Contracts with guaranteed hours

4.—(1) This paragraph applies where—

(a) under the contract of employment under which a shop worker who satisfies paragraph 2(2)(a) was employed on the day before the commencement date, the employer is, or may be, required to provide him with shop work for a specified number of hours each week;

(b) under the contract the shop worker was, or might have been, required to work on Sunday before the commencement date; and

(c) the shop worker has done shop work on Sunday in that employment (whether or not before the commencement date) but has, on or after that date ceased to do so.

(2) So long as the shop worker remains a protected shop worker, the contract shall not be regarded as requiring the employer to provide him with shop work on weekdays in excess of the hours normally worked by the shop worker on weekdays before he ceased to do shop work on Sunday.

(3) For the purposes of paragraph 2(2)(b), the appropriate date in relation to this paragraph is any time in relation to which the contract is to be enforced.

Reduction of pay, etc.

5.—(1) This paragraph applies where—

(a) under the contract of employment under which a shop worker who satisfies paragraph 2(2)(a) was employed on the day before the commencement date, the shop worker was, or might have been, required to work on Sunday before the commencement date;

(b) the shop worker has done shop work on Sunday in that employment (whether or not before the commencement date) but has, on or after that date, ceased to do so; and

(c) it is not apparent from the contract what part of the remuneration payable, or of any other benefit accruing, to the shop worker was intended to be attributable to shop work on Sunday.

(2) So long as the shop worker remains a protected shop worker, the contract shall be regarded as enabling the employer to reduce the amount of remuneration paid, or the extent of the other benefit provided, to the shop worker in respect of any period by the relevant proportion.

(3) In sub-paragraph (2) "the relevant proportion" means the proportion which the hours of shop work which (apart from this Schedule) the shop worker could have been required to do on Sunday in the period ("the contractual Sunday hours") bears to the aggregate of those hours and the hours of work actually done by the shop worker in the period.

(4) Where, under the contract of employment, the hours of work actually done on weekdays in any period would be taken into account in determining the contractual Sunday hours, they shall be taken into account in determining the contractual Sunday hours for the purposes of sub-paragraph (3).

(5) For the purposes of paragraph 2(2)(b), the appropriate date in relation to this paragraph is the end of the period in respect of which the remuneration is paid or the benefit accrues.

Notice of objection to Sunday working

6.—(1) A shop worker to whom this paragraph applies may at any time give his employer written notice, signed and dated by the shop worker, to the effect that he objects to Sunday working.

(2) In this Schedule "opting-out notice" means a notice given under sub-paragraph (1) by a shop worker to whom this paragraph applies.

(3) This paragraph applies to any shop worker who under his contract of employment—

(a) is or may be required to work on Sunday (whether or not as a result of previously giving an opting-in notice); but

(b) is not employed to work only on Sunday.

Meaning of "opted-out shop worker"

7.—(1) Subject to sub-paragraph (2), a shop worker is to be regarded as "opted-out" for the purposes of this Schedule if (and only if,)—

(a) he has given his employer an opting-out notice;

(b) he has been continuously employed during the period beginning with the day on which the notice was given and ending with the day which, in relation to the provision concerned, is the appropriate date; and

(c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker.

(2) A shop worker is not an opted-out shop worker if—

(a) after giving the opting-out notice concerned, he has given his employer an opting-in notice; and

(b) after giving the opting-in notice, he has expressly agreed with his employer to do shop work on Sunday or on a particular Sunday.

(3) In this Schedule "notice period", in relation to an opted-out shop worker, means, subject to paragraph 8(2), the period of three months beginning with the day on which the opting-out notice concerned was given.

Explanatory statement

8.—(1) Where a person becomes a shop worker to whom paragraph 6 applies, his employer shall, before the end of the period of two months beginning with the day on which that person becomes such a worker, give him a written statement in the prescribed form.

(2) If—

(a) an employer fails to comply with sub-paragraph (1) in relation to any shop worker; and

(b) the shop worker, on giving the employer an opting-out notice, becomes an opted-out shop worker,

paragraph 7(3) has effect in relation to the shop worker with the substitution for "three months" of "one month".

(3) An employer shall not be regarded as failing to comply with sub-paragraph (1) in any case where, before the end of the period referred to in that sub-paragraph, the shop worker has given him an opting-out notice.

(4) Subject to sub-paragraph (5), the prescribed form is as follows—

"STATUTORY RIGHTS IN RELATION TO SUNDAY SHOP WORK

You have become employed as a shop worker and are or can be required under your contract of employment to do the Sunday work your contract provides for.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to work in or about a shop on any Sunday on which the shop is open once three months have passed from the date on which you gave the notice.

Your notice must—

be in writing;

be signed and dated by you;

say that you object to Sunday working.

For three months after you give the notice, your employer can still require you to do all the Sunday work your contract provides for. After the three month period has ended, you have the right to complain to an industrial tribunal if, because of your refusal to work on Sundays on which the shop is open, your employer—

dismisses you, or

does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to work on Sunday or that you do not object to Sunday working and then agreeing with your employer to work on Sundays or on a particular Sunday."

(5) The Department of Economic Development may by order subject to negative resolution amend the prescribed form set out in sub-paragraph (4).

Contractual requirements relating to Sunday work

9.—(1) Where a shop worker gives his employer an opting-out notice, the contract of employment under which he was employed immediately before he gave that notice becomes unenforceable to the extent that it—

(a) requires the shop worker to do shop work on Sunday after the end of the notice period; or

(b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.

(2) Subject to sub-paragraph (3), any agreement entered into between an opted-out shop worker and his employer is unenforceable to the extent that it—

(a) requires the shop worker to do shop work on Sunday after the end of the notice period; or

(b) requires the employer to provide the shop worker with shop work on Sunday after the end of that period.

(3) Where, after giving an opting-in notice, an opted-out shop worker expressly agrees with his employer to do shop work on Sunday or on a particular Sunday (and so ceases to be opted-out), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

Sub#para. (4) rep. by 1999 NI 9

(5) For the purposes of paragraph 7(1)(b), the appropriate date—

(a) in relation to sub-paragraphs (2) and (3), is the day on which the agreement is entered into;[F5]. . .

Head (b) rep. by 1999 NI 9

F5 1999 NI 9

Right not to suffer detriment for refusing Sunday work

10.—(1) An employee who is a protected shop worker or an opted-out shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee refused (or proposed to refuse) to do shop work on Sunday or on a particular Sunday.

(2) Sub-paragraph (1) does not apply to anything done in relation to an opted-out shop worker on the ground that he refused (or proposed to refuse) to do shoe work on any Sunday or Sundays falling before the end of the notice period.

(3) An employee who is a shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee gave (or proposed to give) an opting-out notice to his employer.

(4) Sub-paragraphs (1) and (3) do not apply where the detriment in question amounts to dismissal (within the meaning of Part Xl of the Employment Rights Order).

(5) For the purposes of this paragraph a shop worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—

(a) a failure to pay remuneration in respect of shop work on a Sunday which he has not done,

(b) a failure to provide him with any other benefit, where that failure results from the application (in relation to a Sunday on which the employee has not done shop work) of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee; or

(c) a failure to provide him with any work, remuneration or other benefit which by virtue of paragraph 4 or 5 the employer is not obliged to provide.

(6) Where an employer offers to pay a sum specified in the offer to any one or more employees—

(a) who are protected shop workers or opted-out shop workers; or

(b) who under their contracts of employment are not obliged to do shop work on Sunday,

if they agree to do shop work on Sunday or on a particular Sunday sub-paragraphs (7) and (8) apply.

(7) An employee to whom the offer is not made is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to make the offer to him or to pay him the sum specified in the offer.

(8) An employee who does not accept the offer is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to pay him the sum specified in the offer.

(9) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the date of the act or failure to act.

(10) For the purposes of sub-paragraph (9)—

(a) where an act extends over a period, the "date of the act" means the first day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(11) Articles 71 and 72 of the Employment Rights Order (which relate to proceedings brought by an employee**[**[F6] or, as the case may be, worker**]** on the ground that he has been subjected to a detriment in contravention of Article 68,**[**[F7] 69,**[**[F6] 70, 70A or 70B**]]** of that Order) shall have effect as if the reference in Article 71 to those Articles included a reference to this paragraph.

(12) Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation) has effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings, arising out of a contravention or alleged contravention of this paragraph.

(13) The remedy of an employee for infringement of the right conferred by this paragraph is by way of proceedings as mentioned in sub-paragraph (11) and not otherwise.
Sub#para. (14) rep. by 1999 NI 9

(15) Articles 248 and 249 of the Employment Rights Order (death of employee or employer) applies in relation to this paragraph as they apply in relation to provisions of the Employment Rights Order listed in Article 248(2) of that Order.

F6 1998 NI 17
F7 1998 NI 15

Right not to be dismissed for refusing Sunday work

11.—(1) Where an employee who is a protected shop worker or an opted-out shop worker is dismissed, he shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he refused, or proposed to refuse, to do shop work on Sunday or on a particular Sunday.

(2) Sub-paragraph (1) does not apply in relation to an opted-out shop worker where the reason (or principal reason) for the dismissal is that he refused, or proposed to refuse, to do shop work on any Sunday or Sundays falling before the end of the notice period.

(3) A shop worker who is dismissed shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the shop worker gave, or proposed to give, an opting-out notice to the employer.

(4) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the effective date of termination.
Sub#para. (5) rep. by 1999 NI 9

12.—(1) An employee who is dismissed shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if—

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer; and

(c) it is shown that sub-paragraph (2) applies.

(2) This sub-paragraph applies if either—

(a) the employee was a protected shop worker or an opted-out shop worker and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in sub-paragraph (1) of paragraph 11 (read with sub-paragraph (2) of that paragraph); or

(b) the employee was a shop worker and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in sub-paragraph (3) of that paragraph.

(3) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the effective date of termination.

13. Articles 140 and 141 of the Employment Rights Order (qualifying period of employment and upper age limit)[F8]. . . do not apply if—

(a) sub-paragraph (1) of paragraph 11 (read with sub-paragraph (2) of that paragraph) or sub-paragraph (3) of that paragraph applies; or

(b) paragraph 12 applies.

F8 1998 NI 8

Restrictions on contracting out of Schedule

14.—(1) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Schedule; or

(b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this Schedule.

(2) Sub-paragraph (1) does not apply to an agreement to refrain from presenting or continuing with a complaint where—

(a) the Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation); or

(b) the conditions regulating compromise agreements (as set out in Article 245(3) of the Employment Rights Order) are satisfied in relation to the agreement.

Dismissal on grounds of assertion of statutory right

15. In Article 135 of the Employment Rights Order (dismissal on grounds of assertion of statutory right) in paragraph (4)(a) after "this Order" insert "or Schedule 2 to the Shops (Sunday Trading &c.) (Northern Ireland) Order 1997".

Schedule 3—Repeals

Status:
Point in time view as at 01/01/2006.

Changes to legislation:
There are currently no known outstanding effects for the The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997.