
STATUTORY RULES OF NORTHERN IRELAND

1998 No. 386

Working Time Regulations (Northern Ireland) 1998

Part IV

Miscellaneous

Enforcement

28.—(1) In this regulation and regulation 29—

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978(1);

“the relevant requirements” means the following provisions—

- (a) regulations 4(2), 6(2) and (7), 7(1), (2) and (6), 8 and 9; and
- (b) regulation 24, in so far as it applies where regulation 6(1), (2) or (7) is modified or excluded, and

“the relevant statutory provisions” has the same meaning as in the 1978 Order.

(2) It shall be the duty of the Department of Economic Development to make adequate arrangements for the enforcement of the relevant requirements except to the extent that a district council is made responsible for their enforcement by paragraph (3).

(3) Where the relevant requirements apply in relation to workers employed in premises in respect of which a district council is responsible, under the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1997(2), for enforcing any of the relevant statutory provisions, it shall be the duty of that council to enforce those requirements.

(4) The duty imposed on district councils by paragraph (3) shall be performed in accordance with such guidance as may be given to them by the Health and Safety Agency for Northern Ireland.

(5) The following provisions of the 1978 Order shall apply in relation to the enforcement of the relevant requirements as they apply in relation to the enforcement of the relevant statutory provisions, and as if any reference in those provisions to an enforcing authority were a reference to the Department of Economic Development and any district council made responsible for the enforcement of the relevant requirements—

- (a) Article 21;
- (b) Article 22(1), (2)(a) to (d) and (j) to (m), (7) and (8); and
- (c) Articles 23, 24(3), 25(1), (2) and (6), 26 and 28; and
- (d) Article 30, in so far as it relates to information obtained by an inspector in pursuance of a requirement imposed under Article 22(2)(j) or (k).

(1) S.I.1978/1039 (N.I. 9)

(2) S.R. 1997 No. 229

(3) Article 24 of the 1978 Order was amended by the Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049(N.I. 20)), Article 28 and Schedule 2, paragraph 3

(6) Any function of the Health and Safety Agency for Northern Ireland under the 1978 Order which is exercisable in relation to the enforcement by the Department of Economic Development of the relevant statutory provisions shall be exercisable in relation to the enforcement by that Department of the relevant requirements.

Offences

29.—(1) An employer who fails to comply with any of the relevant requirements shall be guilty of an offence.

(2) The following provisions of Article 31(1) of the 1978 Order shall apply where an inspector is exercising or has exercised any power conferred by a provision specified in regulation 28(5)–

- (a) paragraph (e), in so far as it refers to Article 22;
- (b) paragraphs (f) and (g);
- (c) paragraph (h), in so far as it refers to an inspector; and
- (d) paragraphs (j) and (k).

(3) An employer guilty of an offence under paragraph (1) shall be liable–

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(4) A person guilty of an offence under a provision of Article 31(1) of the 1978 Order as applied by paragraph (2) shall be liable to the penalty prescribed in relation to that provision by paragraph (2), (2A), or (4) of Article 31(4), as the case may be.

(5) Articles 34(1), 35, 36 and 39(1) to (3) of the 1978 Order shall apply in relation to the offences provided for in paragraphs (1) and (2) as they apply in relation to offences under the relevant statutory provisions.

Remedies

30.—(1) A worker may present a complaint to an industrial tribunal that his employer–

- (a) has refused to permit him to exercise any right he has under–
 - (i) regulation 10(1) or (2), 11(1), (2) or (3), 12(1) or (4) or 13(1);
 - (ii) regulation 24, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is modified or excluded; or
 - (iii) regulation 25(3) or 27(2); or
- (b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).

(2) An industrial tribunal shall not consider a complaint under this regulation unless it is presented–

- (a) before the end of the period of three months (or, in a case to which regulation 37(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made; or

(4) Paragraph (2A) of Article 31 of the 1978 Order was inserted by, and paragraph (4) of that Article was amended by, Article 6 of the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992 (S.I. 1992/1728 (N.I. 17))

- (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 or, as the case may be, six 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 worker.
- (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 refusing to permit the worker to exercise his right, and
 - (b) any loss sustained by the worker 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 a worker in accordance with regulation 14(2) or 16(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.

Right not to suffer detriment

31.—(1) After Article 68 of the 1996 Order there shall be inserted—

“Working time cases

68A.—(1) A 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 worker—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations (Northern Ireland) 1998,
 - (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
 - (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,
 - (d) being—
 - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
 - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate,
 - (e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or
 - (f) alleged that the employer had infringed such a right.
- (2) It is immaterial for the purposes of paragraph (1)(e) or (f)—
- (a) whether or not the worker has the right, or
 - (b) whether or not the right has been infringed,

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

(3) It is sufficient for paragraph (1)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) This Article does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part XI, unless the dismissal is in circumstances in which, by virtue of Article 240, Part XI does not apply.”.

(2) After Article 71(1) of the 1996 Order (complaints to industrial tribunals) there shall be inserted the following paragraph—

“(1ZA) A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 68A.”.

(3) In Article 72 of the 1996 Order⁽⁵⁾ (remedies)—

(a) in paragraph (2), for “paragraph (6)” there shall be substituted “paragraphs (5A) and (6)”, and

(b) after paragraph (5), there shall be inserted—

“(5A) Where—

(a) the complaint is made under Article 71(1ZA),

(b) the detriment to which the worker is subjected is the termination of his worker’s contract, and

(c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part XI if the worker had been an employee and had been dismissed for the reason specified in Article 132A.”.

(4) In Article 237(2) of the 1996 Order (provisions applicable in relation to service in the armed forces), after sub-paragraph (a) there shall be inserted—

“(aa) in Part VI, Article 68A and Articles 71 and 72 so far as relating to that Article,”.

(5) In Article 243(1) of the 1996 Order⁽⁶⁾ (which lists provisions of the 1996 Order which do not apply to employment in police service), after “Part VA,” there shall be inserted “Article 68A,”.

(6) In Article 244(2)(b) of the 1996 Order (restriction on disclosure of information in interest of national security etc.), for “Articles 68 and 70” there shall be substituted “Articles 68, 68A and 70,”.

(7) In Article 247 of the 1996 Order (remedy for infringement of certain rights) after paragraph (1) there shall be inserted the following paragraph—

“(1ZA) In relation to the right conferred by Article 68A, the reference in paragraph (1) to an employee has effect as a reference to a worker.”.

Unfair dismissal

32.—(1) After Article 132 of the 1996 Order there shall be inserted the following Article—

“Working time cases

132A. An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(5) Article 72 of the 1996 Order was prospectively amended by Article 7 of The Public Interest Disclosure (Northern Ireland) Order 1998 (S.I. [1998/1763 \(N.I. 17\)](#))

(6) Article 243(1) was amended by Article 8(2) of the Police (Health and Safety) (Northern Ireland) Order 1997, S.I. [1997/1774 \(N.I. 16\)](#), and prospectively amended by Article 16 of the Public Interest Disclosure (Northern Ireland) Order 1998

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations (Northern Ireland) 1998,
 - (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
 - (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or
 - (d) being—
 - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
 - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate.”.
- (2) In Article 135 of the 1996 Order (right of employees not to be unfairly dismissed for asserting statutory rights) in paragraph (4)—
- (a) at the end of sub-paragraph (b), the word “and” shall be omitted, and
 - (b) after sub-paragraph (c), there shall be inserted the words—
“and
(d) the rights conferred by the Working Time Regulations (Northern Ireland) 1998.”.
- (3) In Article 137 of the 1996 Order (redundancy as unfair dismissal), after paragraph (3) there shall be inserted the following paragraph—
- “(3A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 132A.”.
- (4) In Articles 140(3) and 141(2) of the 1996 Order (cases where qualifying period of employment not required and disapplication of upper age limit), after sub-paragraph (c) there shall be inserted—
- “(cc) Article 132A applies,”.
- (5) In Articles 143(2) and 144(2) of the 1996 Order, (cases where employee can complain of unfair dismissal notwithstanding industrial action at time of dismissal) after sub-paragraph (b) there shall be inserted—
- “(bb) Article 132A(d) applies,”.
- (6) In Articles 151(4)(b), 152(3), 154(1), 156(3), 163(1)(b) and 164(1) of the 1996 Order, after “132(1)(a) and (b),” there shall be inserted “132A(d),”.
- (7) In Article 244(2) of the 1996 Order (cases where disclosure of information is restricted on ground of national security etc.)—
- (a) in sub-paragraph (g)(i), after “132” there shall be inserted “132A(d)”, and
 - (b) in sub-paragraph (g)(ii), after “of that Article” there shall be inserted “or by reason of the application of paragraph (3A) of that Article in so far as it applies where the reason (or, if more than one, the principal reason) for which an employee was selected for dismissal was that specified in Article 132A(d)”.
- (8) In Article 12(5)(a) of the Industrial Tribunals (Northern Ireland) Order 1996(7) (cases where the Secretary of State’s certificate is not conclusive evidence that action was taken to safeguard national security), after “132 (health and safety)” there shall be inserted “, 132A(d) (working time).”

Conciliation

33. In Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (cases where conciliation provisions apply)–

- (a) at the end of sub-paragraph (d), the word “or” shall be omitted, and
- (b) after sub-paragraph (e), there shall be inserted the words–
“or
(f) under regulation 30 of the Working Time Regulations (Northern Ireland) 1998.”.

Restrictions on contracting out

34.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports–

- (a) to exclude or limit the operation of any provision of these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or
- (b) to preclude a person from bringing proceedings under these Regulations before an industrial tribunal.

(2) Paragraph (1) does not apply to–

- (a) any agreement to refrain from instituting or continuing proceedings where the Labour Relations Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within Article 20(1) (f) of the Industrial Tribunals (Northern Ireland) Order 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating compromise agreements under these Regulations are that–

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,
- (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal,
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,
- (e) the agreement must identify the adviser, and
- (f) the agreement must state that the conditions regulating compromise agreements under these Regulations are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)–

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
- (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.

(5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the worker—

- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
- (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer, or
- (c) in the case of a person within paragraph (4)(c), if the worker makes a payment for the advice received from him.

(6) In paragraph (4)(a), “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(7) In paragraph (4)(b), “independent trade union” has the same meaning as in the 1996 Order.

(8) For the purposes of paragraph (5) any two employers shall be treated as associated if—

- (a) one is a company of which the other (directly or indirectly) has control; or
- (b) both are companies of which a third person (directly or indirectly) has control;

and “associated employer” shall be construed accordingly.