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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 49**

**The Working Time Regulations (Northern Ireland) 2016**

**PART 4**

**Miscellaneous**

**Enforcement**

**36.**—(1) In this regulation, regulations 37 to 42, 48 and Schedule 3—

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

“the Civil Aviation Authority” means the authority referred to in section 2(1) of the Civil Aviation Act 1982<sup>(2)</sup>;

“code of practice” includes a standard, a specification and any other documentary form of practical guidance;

“enforcement authority” means the Executive, a district council, the Civil Aviation Authority or the Department of the Environment;

“government department” includes a department of the Government of the United Kingdom;

“improvement notice” means a notice under paragraph 3 of Schedule 3;

“inspector” means an inspector appointed under paragraph 1 of Schedule 3;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof); and
- (c) any tent or movable structure;

“prohibition notice” means a notice under paragraph 4 of Schedule 3;

“relevant civil aviation worker” means a mobile worker who works mainly on board civil aircraft, excluding any worker to whom regulation 22(2)(b) applies;

“the relevant requirements” means the following provisions—

- (a) regulations 4(2), 6(4), 7(2) and (6), 8, 9(1), (2) and (6), 10, 11 and 35(4)(a);
- (b) regulation 28, insofar as it applies where regulation 7(1), (2) or (6) is modified or excluded, and
- (c) regulation 29(2), insofar as it applies where regulation 7(1), (2) or (6) is excluded;

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

(2) 1982 c. 16

“relevant road transport worker” means a mobile worker to whom one or more of the following applies—

- (a) Regulation (EC) No. 561/2006(3);
- (b) the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) of 1st July 1970; and
- (c) the domestic drivers’ hours code referred to in Article 56(6) of the Road Traffic (Northern Ireland) Order 1981(4);

“the relevant statutory provisions” means—

- (a) the provisions of the 1978 Order and of any regulations made under powers contained in that Order; and
- (b) while and to the extent that they remain in force, the statutory provisions mentioned in Schedule 1 to the 1978 Order.

(2) It shall be the duty of the Executive to make adequate arrangements for the enforcement of the relevant requirements except to the extent that—

- (a) a district council is made responsible for their enforcement by paragraph (3);
- (b) the Civil Aviation Authority is made responsible for their enforcement by paragraph (5); or
- (c) the Department of the Environment is made responsible for their enforcement by paragraph (6).

(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) 1999(5), 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 Executive.

(5) It shall be the duty of the Civil Aviation Authority to enforce the relevant requirements in relation to relevant civil aviation workers.

(6) It shall be the duty of the Department of the Environment to enforce the relevant requirements in relation to relevant road transport workers.

(7) The provisions of Schedule 3 shall apply in relation to the enforcement of the relevant requirements.

(8) Any function of the Department of Enterprise, Trade and Investment under the 1978 Order which is exercisable in relation to the enforcement by the Executive of the relevant statutory provisions shall be exercisable in relation to the enforcement by the Executive of the relevant requirements.

## Offences

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

(2) The provisions of paragraph (3) shall apply where an inspector is exercising or has exercised any power conferred by Schedule 3.

(3) It is an offence for a person—

- (a) to contravene any requirement imposed by the inspector under paragraph 2 of Schedule 3;

(3) O.J. No. L102, 11.04.06, p. 1

(4) S.I. 1981/154 (N.I. 1)

(5) S.R. 1999 No. 90

- (b) to prevent or attempt to prevent any other person from appearing before the inspector or from answering any question to which the inspector may by virtue of paragraph 2(2)(e) of Schedule 3 require an answer;
  - (c) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as is modified on appeal);
  - (d) intentionally to obstruct the inspector in the exercise or performance of the inspector's powers or duties;
  - (e) to use or disclose any information in contravention of paragraph 8 of Schedule 3;
  - (f) to knowingly make a false statement or recklessly to make a statement which is false, where the statement is made in purported compliance with a requirement to furnish any information imposed by or under these Regulations.
- (4) 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.
- (5) A person guilty of an offence under paragraph (3) shall be liable to the penalty prescribed in relation to that provision by paragraph (6), (7) or (8) as the case may be.
- (6) A person guilty of an offence under paragraph (3)(a), (b) or (d), shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person guilty of an offence under paragraph (3)(c) shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
- (8) A person guilty of an offence under any of the sub-paragraphs of paragraph (3) not falling within paragraph (6) or (7), shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment—
    - (i) if the offence is under paragraph (3)(e), to imprisonment for a term not exceeding two years, or a fine, or both;
    - (ii) if the offence is not one to which the preceding head applies, to a fine.
- (9) The provisions set out in regulations 38 to 42 shall apply in relation to the offences provided for in paragraphs (1) and (3).

### **Offences due to fault of other person**

**38.** Where the commission by any person of an offence 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 regulation whether or not proceedings are taken against the first-mentioned person.

### **Offences by bodies corporate etc.**

**39.**—(1) For the purposes of these Regulations, 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 or defaults of a member in connection with the functions of management as if that member were a director of the body corporate.

(2) If an offence under these Regulations is committed by a partnership or proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the partner's part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In paragraph (2) "partner" includes a person purporting to act as a partner.

### **Restriction on institution of proceedings**

**40.** Proceedings for an offence shall not be instituted except by an inspector or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

### **Prosecutions by inspectors**

**41.** An inspector, if authorised in that behalf by an enforcement authority, may, although not of counsel or a solicitor, prosecute before a court of summary jurisdiction proceedings for an offence under these Regulations.

### **Power of court to order cause of offence to be remedied**

**42.—(1)** Where a person is convicted of an offence in respect of any matters which appear to the court to be matters which it is in that person's power to remedy, the court may, in addition to or instead of imposing any punishment, order that person, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under these Regulations in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).

### **Remedies**

**43.—(1)** A worker may present a complaint to an industrial tribunal that the worker's employer—

- (a) has refused to permit the worker to exercise any right the worker has under—
  - (i) regulation 12(1) or (2), 13(1), (2) or (3), 14(1) or (4), 15 or 16;
  - (ii) regulation 28, in so far as it applies where regulation 12(1), 13(1) or (2) or 14(1) is modified or excluded;
  - (iii) regulation 29, in so far as it applies where regulation 12(1), 13(1) or (2) or 14(1) is excluded; or
  - (iv) regulation 30(3), 34(2) or 35(4)(b); or
- (b) has failed to pay the whole or any part of any amount due to the worker under regulation 17(2) or 20(1).

(2) Subject to regulation 44, 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 49(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

- (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 the 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 17(2) or 20(1), it shall order the employer to pay to the worker the amount which it finds to be due.

#### **Extension of time limits because of mediation in certain cross-border disputes**

**44.**—(1) In this regulation—

“Mediation Directive” means [Directive 2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters<sup>(6)</sup>;

“mediation” has the meaning given by article 3(a) of the Mediation Directive;

“mediator” has the meaning given by article 3(b) of the Mediation Directive; and

“relevant dispute” means a dispute to which Article 8(1) of the Mediation Directive applies (certain cross-border disputes).

(2) Paragraph (3) applies where—

- (a) a three month time limit is set by regulation 43(2) in relation to the whole or part of a relevant dispute;
- (b) a mediation in relation to the relevant dispute starts before the period expires; and
- (c) if not extended by this regulation, the time limit would expire before the mediation ends or less than four weeks after it ends.

(3) The time limit expires instead at the end of four weeks after the mediation ends (subject to paragraph (4)).

(4) If a time limit mentioned in paragraph (2)(a) has been extended by this regulation, paragraphs (2) and (3) apply to the extended time limit as they apply to a time limit mentioned in paragraph (2)(a).

(5) Where more than one time limit applies in relation to a relevant dispute, the extension by paragraph (3) of one of those time limits does not affect the others.

(6) For the purposes of this regulation, a mediation starts on the date of the agreement to mediate that is entered into by the parties and the mediator.

(7) For the purposes of this regulation, a mediation ends on the date of the first of these to occur—

- (a) the parties reach an agreement in resolution of the relevant dispute;

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(6) O.J. L 136, 24.5.2008, p. 3

- (b) a party completes the notification of the other parties that it has withdrawn from the mediation;
  - (c) a party to whom a qualifying request is made fails to give a response reaching the other parties within 14 days of the request;
  - (d) the parties, after being notified that the mediator's appointment has ended (by death, resignation or otherwise), fail to agree within 14 days to seek to appoint a replacement mediator; or
  - (e) the mediation otherwise comes to an end pursuant to the terms of the agreement to mediate.
- (8) For the purpose of paragraph (7), a qualifying request is a request by a party that another (A) confirm to all parties that A is continuing with the mediation.
- (9) In the case of any relevant dispute, references in this regulation to a mediation are references to the mediation so far as it relates to that dispute, and references to a party are to be read accordingly.
- (10) Where the tribunal has the power under regulation 43(2)(b) to extend a period of limitation, the power is exercisable in relation to the period of limitation as extended by this regulation.

### **Restrictions on contracting out**

- 45.—**(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(7) (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 the worker's ability to pursue 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) if that person—

- (a) is a qualified lawyer,
  - (b) 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) 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 the person 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 that person.
- (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.

## **Guidance**

**46.—**(1) The Department for Employment and Learning shall, after consulting persons appearing to it to represent the two sides of industry, arrange for the publication, in such form and manner as it considers appropriate, of information and advice concerning the operation of these Regulations.

(2) The information and advice shall be such as appear to that Department best calculated to enable employers and workers affected by these Regulations to understand their respective rights and obligations under them.