

2023 No. 223

EMPLOYMENT

RETAINED EU LAW REFORM

**The Working Time (Amendment) Regulations (Northern
Ireland) 2023**

Made - - - - *21st December 2023*

Coming into operation *1st January 2024*

The Department for the Economy makes these Regulations in exercise of the powers conferred by sections 11(1) and (6), and 20(1) of the Retained EU Law (Revocation and Reform) Act 2023(a) (“the 2023 Act”).

The Department for the Economy is a relevant national authority for the purposes of section 11(1) of the 2023 Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Working Time (Amendment) Regulations (Northern Ireland) 2023.

(2) These Regulations come into operation on 1st January 2024.

(3) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Amendment to the Working Time Regulations (Northern Ireland) 2016

2.—(1) The Working Time Regulations (Northern Ireland) 2016(c) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(2) (interpretation)—

(a) after the definition of “the restricted period” insert—

““sick leave” means absence from work due to sickness or injury;

“statutory leave” means leave provided for in Chapter I (Maternity Leave) or Chapter II (Parental Leave) of Part IX of the 1996 Order;”.

(3) In regulation 15 (entitlement to annual leave)—

(a) in paragraph (5)(a), for “subject to the exception in paragraphs (6) and (7)” substitute “subject to the exceptions in paragraphs (6), (7), (10), (11) and (13)”;

(a) 2023 c. 28
(b) 1954 c. 33 (N.I.)
(c) S.R. 2016 No. 49

(b) after paragraph (9), insert—

“(10) Where, as a result of taking a period of statutory leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year.

(11) Where, as a result of taking a period of sick leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year provided it is taken by the end of the period of 18 months from the end of the leave year in which the entitlement originally arose.

(12) Paragraph (13) applies where, in any leave year, an employer fails to—

- (a) recognise a worker’s right to annual leave under this regulation or to payment for that leave in accordance with regulation 20;
- (b) give the worker a reasonable opportunity to take the leave to which the worker is entitled under this regulation or encourage them to do so; or
- (c) inform the worker that any leave not taken by the end of the leave year, which cannot be carried over, will be lost.

(13) Where this paragraph applies and subject to paragraph (14), the worker is entitled to carry forward any leave to which the worker is entitled under this regulation which is untaken in that leave year or has been taken but not paid in accordance with regulation 20.

(14) Annual leave that has been carried forward pursuant to paragraph (13) cannot be carried forward beyond the end of the first full leave year in which paragraph (13) does not apply.”.

(4) In regulation 16 (entitlement to additional annual leave), after paragraph (6) insert—

“(7) Where, as a result of taking a period of statutory leave in any year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year.”.

(5) In regulation 17(5) (compensation related to entitlement to leave) for “regulation 15(6) and (7)” substitute “regulation 15(6), (7), (10), (11) or (13) or regulation 16(7)”.

(6) In regulation 20 (payment in respect of periods of leave)—

- (a) in paragraph (2), after “in paragraph (3)” insert “and the supplementary provisions in paragraphs (3A) to (3G)”.
- (b) in paragraph (3)—
 - (i) at the end of sub-paragraph (c) omit “and”;
 - (ii) at the end of sub-paragraph (d) for “.” substitute “; and” and
 - (iii) after sub-paragraph (d) insert—

“(e) as if, in the case of entitlement under regulation 13, Articles 5 and 19(3) did not apply.”

(c) after paragraph (3) insert—

“(3A) In the case of entitlement under regulation 15 the following types of payments are to be included when determining the amount of a week’s pay for the purposes of this regulation—

- (a) payments, including commission payments, which are intrinsically linked to the performance of tasks which a worker is obliged to carry out under the terms of their contract;
- (b) payments for professional or personal status relating to length of service, seniority or professional qualifications;
- (c) other payments, such as overtime payments, which have been regularly paid to a worker in the 12 weeks preceding the calculation date.

(3B) To the extent that the types of payment mentioned in paragraph (3A) would not otherwise be accounted for in a calculation of a week's pay under Articles 17 to 20 of the 1996 Order (as those Articles apply for the purposes of this regulation), those types of payment are to be included by calculating the average weekly amount of those payments payable in the relevant period and adding it to the amount of a week's pay arrived at under those Articles.

(3C) In the case of a worker who on the calculation date has been employed by their employer for less than 12 complete weeks, the "relevant period" is the number of complete weeks for which the worker has been employed.

(3D) In the case of a worker who on the calculation date has been employed by their employer for 12 or more complete weeks, the "relevant period" is the period of 12 weeks ending—

- (a) where the calculation date is the last day of the week, with that week, and
- (b) otherwise, with the last complete week before the calculation date.

(3E) In calculating the average weekly amount of payments for the purposes of (3B), no account is to be taken of any weeks during the relevant period in which—

- (a) no remuneration was payable to the worker; or
- (b) a worker was, for any amount of time, on sick leave or leave provided for in Part IX of the 1996 Order.

(3F) If, in a case falling within paragraph (3D), any weeks are discounted under paragraph (3E), earlier weeks shall be taken into account so as to bring the number of weeks to 12 (or as close to 12 as possible).

(3G) For the purposes of paragraph (3F) no account is to be taken of remuneration in weeks preceding the period of 24 weeks ending—

- (a) where the calculation date is the last day of a week, with that week, and
- (b) otherwise, with the last complete week before the calculation date.”.

Sealed with the Official Seal of the Department for the Economy on 21st December 2023.



Colin Jack
A senior officer of the
Department for the Economy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to employment under the Retained EU Law (Revocation and Reform) Act 2023 (c. 28) (“2023 Act”) by way of amendments to the Working Time Regulations (Northern Ireland) 2016 (S.R. 2016 No. 49) (“2016 Regulations”).

Regulation 2 amends regulation 15 and regulation 16 of the 2016 Regulations to include express provision about the rights of workers, in certain circumstances, to carry forward annual leave into subsequent leave years.

Regulation 20 of the 2016 Regulations is also amended to include express provision about the calculation of holiday pay in relation to annual leave taken under regulation 15, which is often referred to as “normal pay”. These new express provisions restate certain employment rights to ensure those rights continue once the interpretative effects of EU law on the UK statute book have been removed at the end of 2023.

An impact assessment has not been produced for these regulations as the purpose of the regulations is to restate certain employment rights to ensure those rights continue to apply from 1 January 2024.

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