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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART I

#### INTRODUCTORY AND INTERPRETATION

##### CHAPTER I

##### CITATION AND COMMENCEMENT

##### **Citation and commencement**

1.—(1) This Order may be cited as the Employment Rights (Northern Ireland) Order 1996.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

##### CHAPTER II

##### INTERPRETATION – GENERAL

##### **Interpretation – general**

2.—(1) Subject to paragraph (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) 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 this Order—

“act” and “action” each includes omission and references to doing an act or taking action shall be construed accordingly,

“the Agency” means the Labour Relations Agency,

“basic award of compensation for unfair dismissal” shall be construed in accordance with Article 152,

“business” includes a trade or profession and includes any activity carried on by a body of persons (whether corporate or unincorporated),

“childbirth” means the birth of a living child or the birth of a child whether living or dead after twenty-four weeks of pregnancy,

“collective agreement” has the meaning given by Article 2(2) of the 1992 Order,

[<sup>F1</sup>“the Contributions and Benefits Act 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992,]

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“the Department” means the Department of Economic Development,  
 “dismissal procedures agreement” means an agreement in writing with respect to procedures relating to dismissal made by or on behalf of one or more independent trade unions and one or more employers or employers' associations,

“employers' association” has the meaning given by Article 4(1) and (2) of the 1992 Order,  
 “expected week of childbirth” means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur,

“guarantee payment” has the meaning given by Article 60,

“independent trade union” means a trade union which—

- (a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations, and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatever) tending towards such control,

“job”, in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed,

[<sup>F2</sup>“limited-term contract” means a contract of employment whereby—

- (a) the employment under the contract is not intended to be permanent, and
- (b) provision is accordingly made in the contract for it to terminate by virtue of a limiting event.]

[<sup>F2</sup>“limiting event”, in relation to a contract of employment means—

- (a) in the case of a contract for a fixed-term, the expiry of the term,
- (b) in the case of a contract made in contemplation of the performance of a specific task, the performance of the task, and
- (c) in the case of a contract which provides for its termination on the occurrence of an event (or the failure of an event to occur), the occurrence of the event (or the failure of the event to occur).]

*Definitions rep. by 1999 NI 9*

“officer” and “official”, in relation to a trade union, have the same meaning as in the Trade Union and Labour Relations Order,

[<sup>F3</sup>“paternity leave” means leave under Article 112A or 112B,]

“position”, in relation to an employee, means the following matters taken as a whole—

- (a) his status as an employee,
- (b) the nature of his work, and
- (c) his terms and conditions of employment,

[<sup>F4</sup>“protected disclosure” has the meaning given by Article 67A,]

“recognised”, in relation to a trade union, has the same meaning as in Part V of the 1992 Order,

“redundancy payment” has the meaning given by Part XII,

“relevant date” has the meaning given by Articles 180 and 188,

“renewal” includes extension, and any reference to renewing a contract or a fixed term shall be construed accordingly,

[<sup>F1</sup>“shared parental leave” means leave under Article 107E or 107G,]

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954,

“successor”, in relation to the employer of an employee, means (subject to paragraph (4)) a person who in consequence of a change occurring (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the undertaking, or of the part of the undertaking, for the purposes of which the employee was employed, has become the owner of the undertaking or part,

“trade union” has the meaning given by Article 3(1) of the 1992 Order,

“the Trade Union and Labour Relations Order” means the Trade Union and Labour Relations (Northern Ireland) Order 1995,

“the 1992 Order” means the Industrial Relations (Northern Ireland) Order 1992,

“week”

- (a) in Chapter III of this Part means a week ending with Saturday, and
- (b) otherwise, except in<sup>F5</sup> Articles [<sup>F6</sup>107F, 107I,] 112A, 112B and 118], means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day and, in relation to any other employee, a week ending with Saturday.

(4) The definition of “successor” in paragraph (3) has effect (subject to the necessary modifications) in relation to a case where—

- (a) the person by whom an undertaking or part of an undertaking is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change, or
- (b) the persons by whom an undertaking or part of an undertaking is owned immediately before a change (whether as partners, trustees or otherwise) include the persons by whom, or include one or more of the persons by whom, it is owned immediately after the change,

as it has effect where the previous owner and the new owner are wholly different persons.

(5) References in this Order (except Part XIII) to redundancy, dismissal by reason of redundancy and similar expressions shall be construed in accordance with Article 174.

(6) In Articles 12(3), 171(2) and 189 “lock-out” means—

- (a) the closing of a place of employment,
- (b) the suspension of work, or
- (c) the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute,

done with a view to compelling persons employed by the employer, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment. n

(7) In Articles 12(1) and (2), 123(2), 175(2) and (3), 178(1), 179(2) and (3) and 189 “strike” means—

- (a) the cessation of work by a body of employed persons acting in combination, or
- (b) a concerted refusal, or a refusal under a common understanding, of any number of employed persons to continue to work for an employer in consequence of a dispute,

done as a means of compelling their employer or any employed person or body of employed persons, or to aid other employees in compelling their employer or any employed person or body of employed persons, to accept or not to accept terms or conditions of or affecting employment.

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- F1** Words in art. 2 inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), s. 23\(1\), Sch. 1 para. 4\(2\)\(b\)](#); S.R. 2015/86, art. 3(2)(d)
- F2** SR 2002/298
- F3** Words in art. 2 substituted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), s. 23\(1\), Sch. 1 para. 4\(2\)\(a\)](#); S.R. 2015/86, art. 4(2)(c) (with art. 7(2))
- F4** 1998 NI 17
- F5** 2002 NI 2
- F6** Words in art. 2 inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), s. 23\(1\), Sch. 1 para. 4\(2\)\(c\)](#); S.R. 2015/86, art. 3(2)(d)

### Employees, workers

3.—(1) In this Order “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Order “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Order “worker” means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

- (a) a contract of employment, or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Order “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Order “employment”

- (a) in relation to an employee, means (except for the purposes of Article 206) employment under a contract of employment, and
- (b) in relation to a worker, means employment under his contract;

and “employed” shall be construed accordingly.

[<sup>F7</sup>(6) This Article has effect subject to Articles 67K and 70B(3); and for the purposes of Part XV so far as relating to Part VA or Article 70B, “worker”, “worker's contract” and, in relation to a worker, “employer”, “employment” and “employed” have the extended meaning given by Article 67K.]

[<sup>F8</sup>(7) This Article has effect subject to Article 107M(3) and (5).]

- F7** 1998 NI 17
- F8** [Art. 3\(7\)](#) added (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), s. 23\(1\), Sch. 1 para. 4\(3\)](#); S.R. 2015/86, art. 3(2)(d)

### Associated employers

4. For the purposes of this Order 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.

**Normal working hours**

5.—(1) Where an employee is entitled to overtime pay when employed for more than a fixed number of hours in a week or other period, there are for the purposes of this Order normal working hours in his case.

(2) Subject to paragraph (3), the normal working hours in such a case are the fixed number of hours.

(3) Where in such a case—

(a) the contract of employment fixes the number, or minimum number, of hours of employment in a week or other period (whether or not it also provides for the reduction of that number or minimum in certain circumstances), and

(b) that number or minimum number of hours exceeds the number of hours without overtime, the normal working hours are that number or minimum number of hours (and not the number of hours without overtime).

CHAPTER III

CONTINUOUS EMPLOYMENT

**Introductory**

6.—(1) References in any provision of this Order to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.

(2) In computing an employee's period of continuous employment for the purposes of any provision of this Order, any question—

(a) whether the employee's employment is of a kind counting towards a period of continuous employment, or

(b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,

shall be determined week by week; but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of twelve months in accordance with Article 7.

(3) Subject to Articles 11 to 13, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.

(4) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

**Period of continuous employment**

7.—(1) An employee's period of continuous employment for the purposes of any provision of this Order—

- (a) (subject to [F9 paragraph] (3)) begins with the day on which the employee starts work, and
- (b) ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision.

(2) F10 .....

(3) If an employee's period of continuous employment includes one or more periods which (by virtue of Article 11, 12 or 13) while not counting in computing the length of the period do not break continuity of employment, the beginning of the period shall be treated as postponed by the number

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of days falling within that intervening period, or the aggregate number of days falling within those periods, calculated in accordance with the Article in question.

- F9** Words in art. 7(1)(a) substituted (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 53(1), **Sch. 7 para. 3(2)(a)** (with reg. 50)
- F10** Art. 7(2) repealed (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 53, Sch. 7 para. 3(2)(b), **Sch. 8(1)** (with reg. 50)

### Weeks counting in computing period

**8.—(1)** Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.  
*Para. (2) rep. by 1999 NI 9*

(3) Subject to paragraph (4), any week (not within paragraph (1)) during the whole or part of which an employee is—

- (a) incapable of work in consequence of sickness or injury,
- (b) absent from work on account of a temporary cessation of work,<sup>F11</sup> or]
- (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose,<sup>F11</sup> . . .

*Sub#para. (d) rep. by 1999 NI 9*

counts in computing the employee's period of employment.

(4) Not more than twenty-six weeks count under paragraph (3)(a)<sup>F11</sup>. . . between any periods falling under paragraph (1).

**F11** [1999 NI 9](#)

### Intervals in employment

**9.—(1)** Where in the case of an employee a date later than the date which would be the effective date of termination by virtue of paragraph (1) of Article 129 is treated for certain purposes as the effective date of termination by virtue of paragraph (2) or (4) of that Article the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of Article 140(1) or 153(1) the period for which the employee has been continuously employed.

(2) Where an employee is by virtue of Article 173(1) regarded for the purposes of Part XII as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, the period of the interval counts as a period of employment in ascertaining for the purposes of Article 190 or 197(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under Article 10 or 11).

(3) Where in the case of an employee a date later than the date which would be the relevant date by virtue of paragraphs (2) to (4) of Article 180 is treated for certain purposes as the relevant date by virtue of paragraph (5) of that Article, the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of Article 190 or 197(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under Article 10 or 11).

### Special provisions for redundancy payments

**10.—(1)** This Article applies where a period of continuous employment has to be determined in relation to an employee for the purposes of the application of Article 190 or 197(1).

- (2) The continuity of a period of employment is broken where—
  - (a) a redundancy payment has previously been paid to the employee (whether in respect of dismissal or in respect of lay-off or short-time), and
  - (b) the contract of employment under which the employee was employed was renewed (whether by the same or another employer) or the employee was re-engaged under a new contract of employment (whether by the same or another employer).
- (3) The continuity of a period of employment is also broken where—
  - (a) a payment has been made to the employee (whether in respect of the termination of his employment or lay-off or short-time) in accordance with a scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 or arrangements falling within Article 212(3) or (4), and
  - (b) he commenced new, or renewed, employment.
- (4) The date on which the person's continuity of employment is broken by virtue of this Article—
  - (a) if the employment was under a contract of employment, is the date which was the relevant date in relation to the payment mentioned in paragraph (2)(a) or (3)(a), and
  - (b) if the employment was otherwise than under a contract of employment, is the date which would have been the relevant date in relation to the payment mentioned in paragraph (2)(a) or (3)(a) had the employment been under a contract of employment.
- (5) For the purposes of this Article a redundancy payment shall be treated as having been paid if—
  - (a) the whole of the payment has been paid to the employee by the employer,
  - (b) a tribunal has determined liability and found that the employer must pay part (but not all) of the redundancy payment and the employer has paid that part, or
  - (c) the Department has paid a sum to the employee in respect of the redundancy payment under Article 202.

### **Employment abroad etc.**

- 11.—(1) This Chapter applies to a period of employment—
  - (a) (subject to the following provisions of this Article) even where during the period the employee was engaged in work wholly or mainly outside Northern Ireland, and
  - (b) even where the employee was excluded by or under this Order from any right conferred by this Order.
- (2) For the purposes of Articles 190 and 197(1) a week of employment does not count in computing a period of employment if the employee—
  - (a) was employed outside Northern Ireland during the whole or part of the week, and
  - (b) was not during that week an employed earner for the purposes of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 in respect of whom a secondary Class 1 contribution was payable under that Act (whether or not the contribution was in fact paid).
- (3) Where by virtue of paragraph (2) a week of employment does not count in computing a period of employment, the continuity of the period is not broken by reason only that the week does not count in computing the period; and the number of days which, for the purposes of Article 7(3), fall within the intervening period is seven for each week within this paragraph.
- (4) Any question arising under paragraph (2) whether—
  - (a) a person was an employed earner for the purposes of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, or

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(b) if so, whether a secondary Class 1 contribution was payable in respect of him under that Act,

shall be determined by<sup>F12</sup> an officer of the Commissioners of Inland Revenue].

[<sup>F12</sup>(5) Part III of the Social Security Contributions (Transfer of Functions etc.) (Northern Ireland) Order 1999 (decisions and appeals) shall apply in relation to the determination of any issue by the Commissioners of Inland Revenue under paragraph (4) as if it were a decision falling within Article 7(1) of that Order.]

(6) Paragraph (2) does not apply in relation to a person who is—

- (a) employed as a master or seaman in a British ship, and
- (b) ordinarily resident in Northern Ireland.

**F12** SI 1999/671

### **Industrial disputes**

**12.**—(1) A week does not count under Article 8 if during the week, or any part of the week, the employee takes part in a strike.

(2) The continuity of an employee's period of employment is not broken by a week which does not count under this Chapter (whether or not by virtue only of paragraph (1)) if during the week, or any part of the week, the employee takes part in a strike; and the number of days which, for the purposes of Article 7(3), fall within the intervening period is the number of days between the last working day before the strike and the day on which work was resumed.

(3) The continuity of an employee's period of employment is not broken by a week if during the week, or any part of the week, the employee is absent from work because of a lock-out by the employer; and the number of days which, for the purposes of Article 7(3), fall within the intervening period is the number of days between the last working day before the lock-out and the day on which work was resumed.

### **Reinstatement after military service**

**13.**—(1) If a person who is entitled to apply to his former employer under the Reserve Forces (Safeguard of Employment) Act 1985 enters the employment of the employer not later than the end of the six month period mentioned in section 1(4)(b) of that Act, his period of service in the armed forces of the Crown in the circumstances specified in section 1(1) of that Act does not break his continuity of employment,

(2) In the case of such a person the number of days which, for the purposes of Article 7(3), fall within the intervening period is the number of days between the last day of his previous period of employment with the employer (or, if there was more than one such period, the last of them) and the first day of the period of employment beginning in the six month period.

### **Change of employer**

**14.**—(1) Subject to the provisions of this Article, this Chapter relates only to employment by the one employer.

(2) If a trade or business, or an undertaking (whether or not established by or under a statutory provision), is transferred from one person to another—

- (a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee, and
- (b) the transfer does not break the continuity of the period of employment.



- (3) If by or under any statutory provision a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer—
- (a) the employee's period of employment at the time when the modification takes effect counts as a period of employment with the second body corporate, and
  - (b) the change of employer does not break the continuity of the period of employment.
- (4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased—
- (a) the employee's period of employment at the time of the death counts as a period of employment with the employer's personal representatives or trustees, and
  - (b) the death does not break the continuity of the period of employment.
- (5) If there is a change in the partners, personal representatives or trustees who employ any person—
- (a) the employee's period of employment at the time of the change counts as a period of employment with the partners, personal representatives or trustees after the change, and
  - (b) the change does not break the continuity of the period of employment.
- (6) If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters the second employer's employment, is an associated employer of the first employer—
- (a) the employee's period of employment at that time counts as a period of employment with the second employer, and
  - (b) the change of employer does not break the continuity of the period of employment.
- (7) If a person employed in relevant employment by a health service employer is taken into relevant employment by another such employer, his period of employment at the time of the change of employer counts as a period of employment with the second employer and the change does not break the continuity of the period of employment.
- (8) For the purposes of paragraph (7) employment is relevant employment if it is employment of a description—
- (a) in which persons are engaged while undergoing professional training which involves their being employed successively by a number of different health service employers, and
  - (b) which is specified in an order made by the Department.
- (9) The following are health service employers for the purposes of paragraphs (7) and (8)—
- (a) Health and Social Services Boards;
  - (b) Special Health and Social Services Agencies;
  - (c) [<sup>F13</sup>Health and Social Care Trusts].

**F13** Words in Order substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(c\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

## **Reinstatement or re-engagement of dismissed employee**

- 15.—**(1) Regulations made by the Department may make provision—
- (a) for preserving the continuity of a person's period of employment for the purposes of this Chapter or for the purposes of this Chapter as applied by or under any other statutory provision specified in the regulations, or

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(b) for modifying or excluding the operation of Article 10 subject to the recovery of any such payment as is mentioned in that Article,

in cases where<sup>F14</sup> . . . a dismissed employee is reinstated<sup>F14</sup>, re#engaged or otherwise re#employed] by his employer or by a successor or associated employer of that employer<sup>F14</sup> in any circumstances prescribed by the regulations.]

*Paras. (2)#(4) rep. by 1998 NI 8*

**F14** 1998 NI 8

## CHAPTER IV

### A WEEK'S PAY

#### Modifications etc. (not altering text)

- C1** Pt. I Ch. IV (arts. 16-25) applied (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 3(2)**
- C2** Pt. I Ch. IV (arts. 16-25) applied (18.8.2006) by European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 2, 29(2), **Sch. 3 para. 22**
- C3** Pt. I Ch. IV (arts. 16-25) applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 paras. 11(4), 12(4)** (with reg. 50)
- C4** Pt. I Ch. IV (arts. 16-25) applied (with modifications) (12.3.2007 with effect from 1.10.2006) by Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007 (S.R. 2007/93), **reg. 5(4)** (with reg. 9(5))
- C5** Pt. I Ch. IV (arts. 16-25) applied (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 44(2), **Sch. 2 para. 20**
- C6** Pt. I Ch. IV (arts. 16-25) applied (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 27(2)** (with reg. 39)

#### *Introductory*

#### **Introductory**

**16.** The amount of a week's pay of an employee shall be calculated for the purposes of this Order in accordance with this Chapter.

#### Modifications etc. (not altering text)

- C7** Arts. 16-24 applied (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), 16(4), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)
- C8** Arts. 16-24 applied (6.4.2006) by Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (S.R. 2006/177), **reg. 16(4)**

## Employments with normal working hours

### General

<sup>F15</sup>17.—(1) This Article and Articles 18 and 19 apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) Subject to Article 18, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.

(3) Subject to Article 18, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does vary with the amount of work done in the I period, the amount of a week's pay is the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve 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.

(4) In this Article references to remuneration varying with the amount of work done includes remuneration which may include any commission or similar payment which varies in amount.

(5) This Article is subject to Articles 23 and 24.

**F15** mod. by SI 2004/1713

#### Modifications etc. (not altering text)

- C9** Arts. 16-24 applied (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 16(4), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)
- C10** Arts. 16-24 applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 16(4)**
- C11** Arts. 17-20 applied (with modifications) (28.2.2016) by [The Working Time Regulations \(Northern Ireland\) 2016 \(S.R. 2016/49\)](#), regs. 1, **20(2)** (with reg. 22(1))
- C12** Arts. 17-20 applied (with modifications) (28.2.2016) by [The Working Time Regulations \(Northern Ireland\) 2016 \(S.R. 2016/49\)](#), regs. 1, **33(1)(c)** (with reg. 22(1))

### Remuneration varying according to time of work

<sup>F16</sup>18.—(1) This Article applies if the employee is required under the contract of employment in force on the calculation date to work during normal working hours on days of the week, or at times of the day, which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of those days or times.

(2) The amount of a week's pay is the amount of remuneration for the average number of weekly normal working hours at the average hourly rate of remuneration.

(3) For the purposes of paragraph (2)—

- (a) the average number of weekly hours is calculated by dividing by twelve the total number of the employee's normal working hours during the relevant period of twelve weeks, and
- (b) the average hourly rate of remuneration is the average hourly rate of remuneration payable by the employer to the employee in respect of the relevant period of twelve weeks.

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(4) In paragraph (3) “the relevant period of twelve weeks” means the period of twelve 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.

(5) This Article is subject to Articles 23 and 24.

**F16** mod. by SI 2004/1713

**Modifications etc. (not altering text)**

- C11** Arts. 17-20 applied (with modifications) (28.2.2016) by [The Working Time Regulations \(Northern Ireland\) 2016 \(S.R. 2016/49\)](#), regs. 1, **20(2)** (with reg. 22(1))
- C12** Arts. 17-20 applied (with modifications) (28.2.2016) by [The Working Time Regulations \(Northern Ireland\) 2016 \(S.R. 2016/49\)](#), regs. 1, **33(1)(c)** (with reg. 22(1))
- C13** Arts. 16-24 applied (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 16(4), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)
- C14** Arts. 16-24 applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 16(4)**

**Supplementary**

<sup>F17</sup>**19.**—(1) For the purposes of Articles 17 and 18, in arriving at the average hourly rate of remuneration, only—

- (a) the hours when the employee was working, and
- (b) the remuneration payable for, or apportionable to, those hours,

shall be brought in.

(2) If for any of the twelve weeks mentioned in Articles 17 and 18 no remuneration within paragraph (1)(b) was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring up to twelve the number of weeks of which account is taken.

(3) Where—

- (a) in arriving at the average hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and
- (b) the amount of that remuneration was greater than it would have been if the work had been done in normal working hours (or, in a case within Article 1(3), in normal working hours falling within the number of hours without overtime),

account shall be taken of that remuneration as if the work had been done in such hours and the amount of that remuneration had been reduced accordingly.

**F17** mod. by SI 2004/1713

**Modifications etc. (not altering text)**

- C11** Arts. 17-20 applied (with modifications) (28.2.2016) by [The Working Time Regulations \(Northern Ireland\) 2016 \(S.R. 2016/49\)](#), regs. 1, **20(2)** (with reg. 22(1))
- C12** Arts. 17-20 applied (with modifications) (28.2.2016) by [The Working Time Regulations \(Northern Ireland\) 2016 \(S.R. 2016/49\)](#), regs. 1, **33(1)(c)** (with reg. 22(1))
- C15** Arts. 16-24 applied (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 16(4), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)

**C16** Arts. 16-24 applied (6.4.2006) by Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (S.R. 2006/177), **reg. 16(4)**

### *Employments with no normal working hours*

#### **Employments with no normal working hours**

<sup>F18</sup>**20.**—(1) This Article applies where there are no normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) The amount of a week's pay is the amount of the employee's average weekly remuneration in the period of twelve 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.

(3) In arriving at the average weekly remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring up to twelve the number of weeks of which account is taken.

(4) This Article is subject to Articles 23 and 24.

**F18** mod. by SI 2004/1713

#### **Modifications etc. (not altering text)**

**C11** Arts. 17-20 applied (with modifications) (28.2.2016) by The Working Time Regulations (Northern Ireland) 2016 (S.R. 2016/49), regs. 1, **20(2)** (with reg. 22(1))

**C12** Arts. 17-20 applied (with modifications) (28.2.2016) by The Working Time Regulations (Northern Ireland) 2016 (S.R. 2016/49), regs. 1, **33(1)(c)** (with reg. 22(1))

**C17** Arts. 16-24 applied (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), 16(4), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)

**C18** Arts. 16-24 applied (6.4.2006) by Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (S.R. 2006/177), **reg. 16(4)**

### *The calculation date*

#### **Rights during employment**

**21.**—(1) Where the calculation is for the purposes of Article 62, the calculation date is—

- (a) where the employee's contract has been varied, or a new contract entered into, in connection with a period of short-time working, the last day on which the original contract was in force, and
- (b) otherwise, the day in respect of which the guarantee payment is payable.

(2) Where the calculation is for the purposes of Article 81 or 82, the calculation date is the day on which the employer's notice was given.

(3) Where the calculation is for the purposes of Article 84, the calculation date is the day of the appointment.

[<sup>F19</sup>(3A) Where the calculation is for the purposes of Article 85ZF, the calculation date is the day of the appointment.]

[<sup>F20</sup>(3B) Where the calculation is for the purposes of Article 85ZK or 85ZM, the calculation date is the day of the appointment.]

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(4) Where the calculation is for the purposes of Article 90, the calculation date is the day on which the time off was taken or on which it is alleged the time off should have been permitted.

[<sup>F21</sup>(4A) Where the calculation is for the purposes of Article 91B, the calculation date is the day on which the time off was taken or on which it is alleged the time off should have been permitted.]

(5) Where the calculation is for the purposes of Article 101—

(a) in the case of an employee suspended on medical grounds, the calculation date is the day before that on which the suspension begins, and

(b) in the case of an employee suspended on maternity grounds, the calculation date is—

[<sup>F22</sup>(i)] [<sup>F22</sup>where the day before that on which the suspension begins falls during a period of ordinary or additional maternity leave, the day before the beginning of that period,] and

(ii) otherwise, the day before that on which the suspension begins.

[<sup>F23</sup>(6) Where the calculation is for the purposes of Article 112I, the calculation date is the day on which the application under Article 112F was made.]

**F19** Art. 21(3A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 15\(3\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(l\)](#)

**F20** Art. 21(3B) inserted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 17\(3\), 23\(1\); S.R. 2015/86, art. 4\(1\)\(e\)](#)

**F21** 1998 NI 15

**F22** 1999 NI 9

**F23** 2002 NI 2

#### Modifications etc. (not altering text)

**C19** Arts. 16-24 applied (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\), regs. 2\(3\), 16\(4\), Sch. 1 para. 11 \(with reg. 21\(1\)\(5\), Sch. 1 para. 3\)](#)

**C20** Arts. 16-24 applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\), reg. 16\(4\)](#)

### Rights on termination

**22.**—(1) Where the calculation is for the purposes of Article 120 or 121, the calculation date is the day immediately preceding the first day of the period of notice required by Article 118(1) or (2).

(2) Where the calculation is for the purposes of Article 125, 151 or 159, the calculation date is—

(a) if the dismissal was with notice, the date on which the employer's notice was given, and

(b) otherwise, the effective date of termination.

(3) Where the calculation is for the purposes of Article [<sup>F24</sup> 146, 153, 154 or 155] the calculation date is—

*Sub#para. (a) rep. by 1999 NI 9*

(b) if by virtue of paragraph (2) or (4) of Article 129 a date later than the effective date of termination as defined in paragraph (1) of that Article is to be treated for certain purposes as the effective date of termination, the effective date of termination as so defined, and

(c) otherwise, the date specified in paragraph (6).

(4) Where the calculation is for the purposes of Article 182(2), the calculation date is the day immediately preceding the first of the four, or six, weeks referred to in Article 183(2).

(5) Where the calculation is for the purposes of Article 197, the calculation date is—

*Sub#para. (a) rep. by 1999 NI 9*

- (b) if by virtue of paragraph (5) of Article 180 a date is to be treated for certain purposes as the relevant date which is later than the relevant date as defined by the previous provisions of that Article, the relevant date as so defined, and
- (c) otherwise, the date specified in paragraph (6).
- (6) The date referred to in paragraphs (3)(c) and (5)(c) is the date on which notice would have been given had—
- (a) the contract been terminable by notice and been terminated by the employer giving such notice as is required by Article 118 to terminate the contract, and
- (b) the notice expired on the effective date of termination, or the relevant date,
- (whether or not those conditions were in fact fulfilled).
- (7) Where the calculation is for the purposes of Article 218, the calculation date is the date on which the protective award was made or, in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of paragraph (5) is the calculation date for the purpose of computing the amount of a redundancy payment in relation to that dismissal (whether or not the employee concerned is entitled to any such payment).

**F24** 2003 NI 15

**Modifications etc. (not altering text)**

- C21** Arts. 16-24 applied (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 16(4), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)
- C22** Arts. 16-24 applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 16(4)**

*Maximum amount of week's pay*

**Maximum amount**

- 23.**—(1) For the purpose of calculating—
- [<sup>F25</sup>(za) an award of compensation under Article 112I(1)(b),]
- (a) a basic award of compensation for unfair dismissal,
- (b) an additional award of compensation for unfair dismissal,
- [<sup>F26</sup>(ba) an award under Article 146(5); or]
- (c) a redundancy payment,
- the amount of a week's pay shall not exceed [<sup>F27</sup>£547].
- Paras. (2)#(4) rep. by 1999 NI 9*

**F25** 2002 NI 2

**F26** 2003 NI 15

**F27** Sum in art. 23(1) substituted (6.4.2019) by [The Employment Rights \(Increase of Limits\) Order \(Northern Ireland\) 2019 \(S.R. 2019/63\)](#), arts. 1(1), 3, **Sch.** (with art. 4)

**Modifications etc. (not altering text)**

- C23** Arts. 16-24 applied (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 16(4), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)
- C24** Arts. 16-24 applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 16(4)**

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- C25** Art. 23(1): power to amend conferred (1.10.2006) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), **16(1)(a)**; S.R. 2006/344, **art. 3(d)**
- C26** Art. 23(1) applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 paras. 11(5), 12(5)** (with reg. 50)

### *Miscellaneous*

#### **New employments and other special cases**

**24.**—(1) In any case in which the employee has not been employed for a sufficient period to enable a calculation to be made under the preceding provisions of this Chapter, the amount of a week's pay is the amount which fairly represents a week's pay.

(2) In determining that amount the industrial tribunal—

- (a) shall apply as nearly as may be such of the preceding provisions of this Chapter as it considers appropriate, and
- (b) may have regard to such of the considerations specified in paragraph (3) as it thinks fit.

(3) The considerations referred to in paragraph (2)(b) are—

- (a) any remuneration received by the employee in respect of the employment in question,
- (b) the amount offered to the employee as remuneration in respect of the employment in question,
- (c) the remuneration received by other persons engaged in relevant comparable employment with the same employer, and
- (d) the remuneration received by other persons engaged in relevant comparable employment with other employers.

(4) The Department may by regulations provide that in cases prescribed by the regulations the amount of a week's pay shall be calculated in such manner as may be so prescribed.

#### **Modifications etc. (not altering text)**

- C27** Arts. 16-24 applied (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 16(4), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)
- C28** Arts. 16-24 applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 16(4)**

#### **Supplementary**

**25.**—(1) In arriving at—

- (a) an average hourly rate of remuneration, or
- (b) average weekly remuneration,

under this Chapter, account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of Chapter III of this Part, a period of employment with the former employer counts as part of the employee's continuous period of employment.

(2) Where under this Chapter account is to be taken of remuneration or other payments for a period which does not coincide with the periods for which the remuneration or other payments are calculated, the remuneration or other payments shall be apportioned in such manner as may be just.



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