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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 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,]

“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,

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“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>“parental bereavement leave” means leave under Article 112EA,]

[<sup>F4</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>F5</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>[F6]</sup> Articles <sup>[F7]</sup>107F, 107I, 112A, 112B <sup>[F8]</sup>, 112EA 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.

**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(3) inserted (23.3.2022) by [Parental Bereavement \(Leave and Pay\) Act \(Northern Ireland\) 2022 \(c. 5\), ss. 4, 5\(5\)\(6\), Sch. Pt. 1 para. 16\(a\)](#); S.R. 2022/136, arts. 2, 3

**F4** 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))

**F5** 1998 NI 17

**F6** 2002 NI 2

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- F7** 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)
- F8** Words in art. 2(3) inserted (23.3.2022) by [Parental Bereavement \(Leave and Pay\) Act \(Northern Ireland\) 2022 \(c. 5\), ss. 4, 5\(5\)\(6\), Sch. Pt. 1 para. 16\(b\)](#); S.R. 2022/136, arts. 2, 3

### 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>F9</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>F10</sup>(7) This Article has effect subject to Article 107M(3) and (5).]

- F9** 1998 NI 17
- F10** [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).

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Act applied with modifications by [S.R. 2023/156 reg. 15](#)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Pt. 7A inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 1](#)
- Ch. 5 inserted by [2022 c. 27 \(N.I.\) s. 1\(1\)](#)
- art. 21(4B) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 2](#)
- art. 23(1)(zza) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 3](#)
- art. 70F inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 4](#)
- art. 70G inserted by [2020 c. 7 Sch. 7 para. 20](#)
- art. 71(1C) inserted by [2020 c. 7 Sch. 7 para. 21\(a\)](#)
- art. 72(8) inserted by [2020 c. 7 Sch. 7 para. 22\(b\)](#)
- art. 85ZS(3)(a)-(c) substituted for words by [2022 c. 18 \(N.I.\) Sch. 3 para. 47\(4\)](#)
- art. 95F(5A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 32](#)
- art. 135E inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 6](#)
- art. 135G inserted by [2020 c. 7 Sch. 7 para. 25](#)
- art. 137(6D) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 7](#)
- art. 137(7N) inserted by [2020 c. 7 Sch. 7 para. 26\(b\)](#)
- art. 140(3)(fj) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 8](#)
- art. 140(3)(fl) inserted by [2020 c. 7 Sch. 7 para. 27](#)
- art. 143(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 9](#)
- art. 144(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 10](#)