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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 IV

A WEEK'S PAY

*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.

*Employments with normal working hours*

**General**

**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 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.

**Remuneration varying according to time of work**

**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.

(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.

### **Supplementary**

**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.

### *Employments with no normal working hours*

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

**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.

#### *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.

(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.

(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—
  - (i) where the day before that on which the suspension begins falls within either the employee's maternity leave period or the further period up to the day on which the employee exercises the right conferred on her by Article 111, the day before the beginning of the maternity leave period, and
  - (ii) otherwise, the day before that on which the suspension begins.

### **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 153 or 155, the calculation date is—

- (a) if the employee is taken to be dismissed by virtue of Article 128(1), the last day on which the employee worked under her contract of employment immediately before the beginning of her maternity leave period,
- (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—

- (a) if the employee is taken to be dismissed by virtue of Article 172(1), the last day on which the employee worked under her contract of employment immediately before the beginning of her maternity leave period,
- (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).

#### *Maximum amount of week's pay*

#### **Maximum amount**

**23.**—(1) For the purpose of calculating—

- (a) a basic award of compensation for unfair dismissal,
- (b) an additional award of compensation for unfair dismissal, or
- (c) a redundancy payment,

the amount of a week's pay shall not exceed £210.

(2) The Department may by order vary the limits imposed by paragraph (1).

(3) Such an order may provide that it applies in the case of a dismissal—

- (a) in relation to which the date which is the effective date of termination for the purposes of this paragraph by virtue of Article 129(2) or (4) falls after the order comes into operation, or
- (b) in relation to which the date which is the relevant date for the purposes of this paragraph by virtue of Article 180(5) falls after the order comes into operation,

even if the date which is the effective date of termination, or the relevant date, for other purposes of this Order falls before the order comes into operation.

(4) Paragraph (3)—

- (a) does not apply to a case within Article 128(1) or 172(1), but
- (b) is without prejudice to Article 251(6).

### *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.

#### **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.