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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART VII

#### TIME OFF WORK

##### *Public duties*

##### **Right to time off for public duties**

**78.**—(1) An employer shall permit an employee of his who is a justice of the peace to take time off during the employee's working hours for the purpose of performing any of the duties of his office.

(2) An employer shall permit an employee of his who is a member of—

- (a) a district council,
- [<sup>F1</sup>(aa) the Northern Ireland Library Authority;]
- (b) a statutory tribunal,
- [<sup>F2</sup>(c) an independent monitoring board appointed under section 10 of the Prison Act (Northern Ireland) 1953;]
- (d) a relevant health body,<sup>F3</sup> . . .
- (e) a relevant education body,<sup>F3</sup> or
- [<sup>F4</sup>(f) a policing and community safety partnership or a district policing and community partnership,]

to take time off during the employee's working hours for the purposes specified in paragraph (3).

(3) The purposes referred to in paragraph (2) are—

- (a) attendance at a meeting of the body or any of its committees or sub-committees, and
- (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.

(4) The amount of time off which an employee is to be permitted to take under this Article, and the occasions on which and any conditions subject to which time off may be so taken, are those that are reasonable in all the circumstances having regard, in particular,

- (a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty,
- (b) how much time off the employee has already been permitted under this Article or Article 92 or 94, and
- (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

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*Para. (5) rep. by 2005 NI 15*

(6) In paragraph (2)(d) “a relevant health body” means—

- (a) a Health and Social Services Board; or
- (b) a <sup>F5</sup>Health and Social Care Trust].

(7) In paragraph (2)(e) “a relevant education body” means—

- <sup>F6</sup>(a) the Education Authority;]
- (b) the Council for Catholic Maintained Schools;
- (c) the Northern Ireland Council for the Curriculum, Examinations and Assessment,
- <sup>F7</sup>(cc) the General Teaching Council for Northern Ireland;]
- (d) the Board of Governors of a grant-aided school,
- (e) the governing body of an institution of further education, or
- (f) the managers of a college of education.

<sup>F8</sup>(7A) .....

(8) The Department may by order—

- (a) modify the provisions of paragraphs (1) and (2) and (5) to (7) by adding any office or body, removing any office or body or altering the description of any office or body, or
- (b) modify the provisions of paragraph (3).

(9) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

**F1** Art. 78(2)(aa) inserted (1.10.2008) by [Libraries Act \(Northern Ireland\) 2008 \(c. 8\)](#), ss. 10(1), 12(2), [Sch. 3 para. 5](#); S.R. 2008/396, [art. 2\(f\)\(h\)](#)

**F2** 2005 NI 15

**F3** SR 2003/381

**F4** Art. 78(2)(f) substituted (1.4.2012) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\)](#), s. 111(3), [Sch. 7 para. 6](#); S.R. 2012/142, [art. 2\(d\)](#)

**F5** 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](#)

**F6** Art. 78(7)(a) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), [s. 7\(2\)\(c\)](#), [Sch. 3 para. 16](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, [art. 2\(b\)](#)

**F7** 1998 NI 13

**F8** Art. 78(7A) repealed (1.4.2012) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\)](#), s. 111(3), [Sch. 8 Pt. 2](#); S.R. 2012/142, [art. 2\(e\)](#)

## Complaints to industrial tribunals

**79.**—(1) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by Article 78.

(2) An industrial tribunal shall not consider a complaint under this Article that an employer has failed to permit an employee to take time off unless it is presented—

- (a) before the end of the period of three months beginning with the date on which the failure occurred, 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 months.

- (3) Where an industrial tribunal finds a complaint under this Article 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 employee.
- (4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard
  - (a) the employer's default in failing to permit time off to be taken by the employee, and
  - (b) any loss sustained by the employee which is attributable to the matters to which the complaint relates.

#### *Looking for work and making arrangements for training*

#### **Right to time off to look for work or arrange training**

**80.**—(1) An employee who is given notice of dismissal by reason of redundancy is entitled to be permitted by his employer to take reasonable time off during the employee's working hours before the end of his notice in order to—

- (a) look for new employment, or
- (b) make arrangements for training for future employment.

(2) An employee is not entitled to take time off under this Article unless, on whichever is the later of—

- (a) the date on which the notice is due to expire, and
- (b) the date on which it would expire were it the notice required to be given by Article 118(1),

he will have been (or would have been) continuously employed for a period of two years or more.

(3) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

#### **Right to remuneration for time off under Article 80**

**81.**—(1) An employee who is permitted to take time off under Article 80 is entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the notice of dismissal was given.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the notice was given.

(4) If an employer unreasonably refuses to permit an employee to take time off from work as required by Article 80, the employee is entitled to be paid an amount equal to the remuneration to which he would have been entitled under paragraph (1) if he had been permitted to take the time off.

(5) The amount of an employer's liability to pay remuneration under paragraph (1) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.

(6) A right to any amount under paragraph (1) or (4) does not affect any right of an employee in relation to remuneration under his contract of employment (( "contractual remuneration").

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(7) Any contractual remuneration paid to an employee in respect of a period of time off under Article 80 goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **Complaints to industrial tribunals**

- 82.**—(1) An employee may present a complaint to an industrial tribunal that his employer—
- (a) has unreasonably refused to permit him to take time off as required by Article 80, or
  - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 81(1) or (4).
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the date on which it is alleged that the time off should have been permitted, 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 months.
- (3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall—
- (a) make a declaration to that effect, and
  - (b) order the employer to pay to the employee the amount which it finds due to him.
- (4) The amount which may be ordered by a tribunal to be paid by an employer under paragraph (3) (or, where the employer is liable to pay remuneration under Article 81, the aggregate of that amount and the amount of that liability) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.

### *Ante-natal care*

#### **Right to time off for ante-natal care**

- 83.**—(1) An employee who—
- (a) is pregnant, and
  - (b) has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care,
- is entitled to be permitted by her employer to take time off during the employee's working hours in order to enable her to keep the appointment.
- (2) An employee is not entitled to take time off under this Article to keep an appointment unless, if her employer requests her to do so, she produces for his inspection—
- (a) a certificate from a registered medical practitioner, registered midwife or registered health visitor stating that the employee is pregnant, and
  - (b) an appointment card or some other document showing that the appointment has been made.
- (3) Paragraph (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with paragraph (1).

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with her contract of employment, the employee is required to be at work.

### **Right to remuneration for time off under Article 83**

**84.**—(1) An employee who is permitted to Article 83 is entitled to be paid remuneration by period of absence at the appropriate hourly rate. take time off under her employer for the

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

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

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract, and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under her contract of employment (“contractual remuneration”).

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 83 goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **Complaints to industrial tribunals**

**85.**—(1) An employee may present a complaint to an industrial tribunal that her employer—

- (a) has unreasonably refused to permit her to take time off as required by Article 83, or
- (b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 84.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the date of the appointment concerned, 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 months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee [F<sup>9</sup> an amount that

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is twice the amount of] the remuneration to which she would have been entitled under Article 84 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under Article 84, the tribunal shall also order the employer to pay to the employee the amount which it finds due to her.

**F9** Words in art. 85(4) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), [ss. 16\(2\)](#), [23\(1\)](#); S.R. 2015/86, art. 3(1)(m) (with art. 6(2))

*[<sup>F10</sup> Ante-natal care: agency workers*

**F10** Arts. 85ZA-85ZD and preceding cross-heading inserted (5.12.2011) by [Agency Workers Regulations \(Northern Ireland\) 2011 \(S.R. 2011/350\)](#), [Sch. 2 para. 10](#)

### **Right to time off for ante-natal care (agency workers)**

**85ZA.**—(1) An agency worker who—

- (a) is pregnant, and
- (b) has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care,

is entitled to be permitted, by the temporary work agency and the hirer, to take time off during the agency worker's working hours in order to enable her to keep the appointment.

(2) An agency worker is not entitled to be permitted by either of those persons to take time off under this Article to keep an appointment unless, if that person requests her to do so, she produces for that person's inspection—

- (a) a certificate from a registered medical practitioner, registered midwife or registered health visitor stating that the agency worker is pregnant, and
- (b) an appointment card or some other document showing that the appointment has been made.

(3) Paragraph (2) does not apply where the agency worker's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with paragraph (1).

(4) For the purposes of this Article the working hours of an agency worker shall be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

(5) In this Article references to a registered health visitor have the same meaning as in Article 83(1)(b).

### **Right to remuneration for time off under Article 85ZA**

**85ZB.**—(1) An agency worker who is permitted to take time off under Article 85ZA is entitled to be paid remuneration by the temporary work agency for the period of absence at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off is taken.

(3) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken.

(4) A right to any amount under paragraph (1) does not affect any right of an agency worker in relation to remuneration under her contract with the temporary work agency (“contractual remuneration”).

(5) Any contractual remuneration paid to an agency worker in respect of a period of time off under Article 85ZA goes towards discharging any liability of the temporary work agency to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the temporary work agency to pay contractual remuneration in respect of that period.

### Complaints to industrial tribunals: agency workers

**85ZC.**—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency—

- (a) has unreasonably refused to permit her to take time off as required by Article 85ZA, or
- (b) has failed to pay the whole or any part of any amount to which she is entitled under Article 85ZB.

(2) An agency worker may present a complaint to an industrial tribunal that the hirer has unreasonably refused to permit her to take time off as required by Article 85ZA.

(3) An industrial tribunal shall not consider a complaint under paragraph (1) or (2) unless it is presented—

- (a) before the end of the period of three months beginning with the date of the appointment concerned, 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 months.

(4) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall make a declaration to that effect.

(5) If the complaint is that the temporary work agency or hirer has unreasonably refused to permit the agency worker to take time off, the tribunal shall also order payment to the agency worker of <sup>F11</sup>an amount that is twice the amount of] the remuneration to which she would have been entitled under Article 85ZB if she had not been refused the time off.

(6) Where the tribunal orders payment under paragraph (5), the amount payable by each party shall be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

(7) If the complaint is that the temporary work agency has failed to pay the agency worker the whole or part of any amount to which she is entitled under Article 85ZB, the tribunal shall also order the temporary work agency to pay to the agency worker the amount which it finds due to her.

**F11** Words in art. 85ZC(5) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015](#) (c. 1), [ss. 16\(3\), 23\(1\)](#); S.R. 2015/86, [art. 3\(1\)\(m\)](#) (with [art. 6\(2\)](#))

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### Agency workers: supplementary

**85ZD.**—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law Articles 85ZA to 85ZC do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) is no longer entitled to the rights conferred by regulation 5 of the Agency Workers Regulations (Northern Ireland) 2011 pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in those Articles imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration of the assignment, whichever is the longer.

(3) Those Articles do not apply where Articles 85 to 87 apply.

(4) In this Article and Articles 85ZA to 85ZC the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011—

- ““agency worker””;
- ““assignment””;
- ““hirer””;
- ““qualifying period””;
- ““temporary work agency””.]

*[<sup>F12</sup>Accompanying to ante-natal appointments*

**F12** Arts. 85ZE-85ZI and cross-headings inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 15(2), 23(1)**; S.R. 2015/86, art. 3(1)(l)

### Right to time off to accompany to ante-natal appointments

**85ZE.**—(1) An employee who has a qualifying relationship with a pregnant woman or her expected child is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an employee is not entitled to take time off for the purpose specified in paragraph (1) on more than two occasions.

(3) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(4) An employee is not entitled to take time off for the purpose specified in paragraph (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

(5) Where the employer requests the employee to give the employer a declaration signed by the employee, the employee is not entitled to take time off for the purpose specified in paragraph (1) unless the employee gives that declaration (which may be given in electronic form).

(6) The employee must state in the declaration—

- (a) that the employee has a qualifying relationship with a pregnant woman or her expected child,
- (b) that the employee's purpose in taking time off is the purpose specified in paragraph (1),



- (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered health visitor, and
  - (d) the date and time of the appointment.
- (7) A person has a qualifying relationship with a pregnant woman or her expected child if—
- (a) the person is the husband or civil partner of the pregnant woman,
  - (b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,
  - (c) the person is the father of the expected child,
  - (d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, or
  - (e) the person is a potential applicant for a parental order under section 54 of that Act in respect of the expected child.
- (8) For the purposes of paragraph (7), a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.
- (9) The references to relationships in paragraph (8)—
- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
  - (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,
- but do not include any other adoptive relationships.
- (10) For the purposes of paragraph (7)(e), a person (“A”) is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—
- (a) A intends to apply, jointly with another person (“B”), for such an order in respect of the expected child within the time allowed by subsection (3) of that section,
  - (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,
  - (c) the requirement in subsection (1)(b) of that section is satisfied by reference to A or B,
  - (d) A and B would satisfy subsection (2) of that section if they made an application under that section at the time that A seeks to exercise the right under this Article, and
  - (e) A expects that A and B will satisfy the conditions in subsections (2), (4), (5) and (8) of that section as regards the intended application.
- (11) For the purposes of this Article, the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

### **Complaint to industrial tribunal**

**85ZF.**—(1) An employee may present a complaint to an industrial tribunal that his or her employer has unreasonably refused to let him or her take time off as required by Article 85ZE.

- (2) An industrial tribunal may not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the day of the appointment in question, 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 months.

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- (3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it—
  - (a) must make a declaration to that effect, and
  - (b) must order the employer to pay to the employee an amount determined in accordance with paragraph (4).
- (4) The amount payable to the employee is—

where—

- a A is the appropriate hourly rate for the employee, and
- b B is the number of working hours for which the employee would have been entitled under Article 85ZE to be absent if the time off had not been refused.

(5) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off would have been taken.

(6) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by—

- (a) the average number of normal working hours, calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off would have been taken, or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (7) as are appropriate in the circumstances.

(7) The considerations referred to in paragraph (6)(b) are—

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee's contract, and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

*Accompanying to ante-natal appointments: agency workers*

### **Right to time off to accompany to ante-natal appointments: agency workers**

**85ZG.**—(1) An agency worker who has a qualifying relationship with a pregnant woman or her expected child is entitled to be permitted, by the temporary work agency and the hirer, to take time off during the agency worker's working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an agency worker is not entitled to take time off for the purpose specified in paragraph (1) on more than two occasions.

(3) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(4) An agency worker is not entitled to take time off for the purpose specified in paragraph (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

(5) Where the temporary work agency or the hirer requests the agency worker to give that person a declaration signed by the agency worker, the agency worker is not entitled to take time off for the

purpose specified in paragraph (1) unless the agency worker gives that declaration (which may be given in electronic form).

- (6) The agency worker must state in the declaration—
  - (a) that the agency worker has a qualifying relationship with a pregnant woman or her expected child,
  - (b) that the agency worker's purpose in taking time off is the purpose specified in paragraph (1),
  - (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered health visitor, and
  - (d) the date and time of the appointment.
- (7) A person has a qualifying relationship with a pregnant woman or her expected child if—
  - (a) the person is the husband or civil partner of the pregnant woman,
  - (b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,
  - (c) the person is the father of the expected child,
  - (d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, or
  - (e) the person is a potential applicant for a parental order under section 54 of that Act in respect of the expected child.
- (8) For the purposes of paragraph (7), a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.
- (9) The references to relationships in paragraph (8)—
  - (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
  - (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,but do not include any other adoptive relationships.
- (10) For the purposes of paragraph (7)(e), a person (“A”) is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—
  - (a) A intends to apply, jointly with another person (“B”), for such an order in respect of the expected child within the time allowed by subsection (3) of that section,
  - (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,
  - (c) the requirement in subsection (1)(b) of that section is satisfied by reference to A or B,
  - (d) A and B would satisfy subsection (2) of that section if they made an application under that section at the time that A seeks to exercise the right under this Article, and
  - (e) A expects that A and B will satisfy the conditions in subsections (2), (4), (5) and (8) of that section as regards the intended application.
- (11) For the purposes of this Article, the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

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### **Complaint to industrial tribunal: agency workers**

**85ZH.**—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency has unreasonably refused to let him or her take time off as required by Article 85ZG.

(2) An agency worker may present a complaint to an industrial tribunal that the hirer has unreasonably refused to let him or her take time off as required by Article 85ZG.

(3) An industrial tribunal may not consider a complaint under paragraph (1) or (2) unless it is presented—

- (a) before the end of the period of three months beginning with the day of the appointment in question, 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 months.

(4) Where an industrial tribunal finds a complaint under paragraph (1) or (2) well-founded, it—

- (a) must make a declaration to that effect, and
- (b) must order the payment to the agency worker of an amount determined in accordance with paragraph (6).

(5) Where the tribunal orders that payment under paragraph (4) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

(6) The amount payable to the agency worker is—

where—

- a A is the appropriate hourly rate for the agency worker, and
- b B is the number of working hours for which the agency worker would have been entitled under Article 85ZG to be absent if the time off had not been refused.

(7) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off would have been taken.

(8) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off would have been taken.

### **Agency workers: supplementary**

**85ZI.**—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law, Articles 85ZG and 85ZH do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations (Northern Ireland) 2011, is no longer entitled to the rights conferred by regulation 5 of those Regulations.

(2) Nothing in Articles 85ZG and 85ZH imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.

(3) Articles 85ZG and 85ZH do not apply where Articles 85ZE and 85ZF apply.

(4) In this Article and Articles 85ZG and 85ZH the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3, 4 and 7 of the regulations)—

- “agency worker”,
- “assignment”,
- “hirer”,
- “qualifying period”,
- “temporary work agency”.]

*[<sup>F13</sup>Adoption appointments*

**F13** Arts. 85ZJ-85ZS and cross-headings inserted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 17\(2\), 23\(1\); S.R. 2015/86, art. 4\(1\)\(e\)](#)

**Right to paid time off to attend adoption appointments**

**85ZJ.**—(1) An employee who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee alone is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An employee who—

- (a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly, and
- (b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(3) An employee may not make an election for the purposes of paragraph (2)(b) if—

- (a) the employee has made an election for the purposes of Article 85ZL(1)(b) in connection with the adoption, or
- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (2)(b) or Article 85ZN(2)(b) in connection with the adoption.

(4) An employee is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the employee.

(5) In relation to any particular adoption, an employee is not entitled to take time off under this Article on more than five occasions.

(6) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(7) An employee is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1) or (2)(a).

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(8) An employee is not entitled to take time off under paragraph (1) unless, if the employer requests it, the employee gives the employer a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(9) An employee is not entitled to take time off under paragraph (2) unless, if the employer requests it, the employee gives the employer—

- (a) a declaration signed by the employee stating that the employee has made an election for the purposes of paragraph (2)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(10) A document or declaration requested under paragraph (8) or (9) may be given in electronic form.

(11) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraphs (1) and (2) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
- (b) the references in paragraphs (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (3) to the adoption were references to any of the adoptions that are part of the arrangement,
- (d) the reference in paragraph (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
- (e) the reference in paragraph (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(12) For the purposes of this Article the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

(13) In this Article, an “adoption agency” means an adoption agency for the purposes of the Adoption (Northern Ireland) Order 1987 (see Articles 2(2) and 3(3) of the Order).

### **Right to remuneration for time off under Article 85ZJ**

**85ZK.**—(1) An employee who is permitted to take time off under Article 85ZJ is entitled to be paid remuneration by his or her employer for the number of working hours for which the employee is entitled to be absent, at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by—

- (a) the average number of normal working hours, calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

- (4) The considerations referred to in paragraph (3)(b) are—
- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee's contract, and
  - (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under the employee's contract of employment (“contractual remuneration”).

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 85ZJ goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period.

(7) Any payment of remuneration under paragraph (1) in respect of a period of time off under Article 85ZJ goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **Right to unpaid time off to attend adoption appointments**

**85ZL.**—(1) An employee who—

- (a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly, and
- (b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An employee may not make an election for the purposes of paragraph (1)(b) if—

- (a) the employee has made an election for the purposes of Article 85ZJ(2)(b) in connection with the adoption, or
- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (1)(b) or Article 85ZP(1)(b) in connection with the adoption.

(3) An employee is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the employee.

(4) In relation to any particular adoption, an employee is not entitled to take time off under this Article on more than two occasions.

(5) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(6) An employee is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1)(a).

(7) An employee is not entitled to take time off under this Article unless, if the employer requests it, the employee gives the employer—

- (a) a declaration signed by the employee stating that the employee has made an election for the purposes of paragraph (1)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (6).

(8) A declaration or document requested under paragraph (7) may be given in electronic form.

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(9) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee and another person jointly as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraph (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
- (b) the references in paragraphs (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (2) to the adoption were references to any of the adoptions that are part of the arrangement,
- (d) the reference in paragraph (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
- (e) the reference in paragraph (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(10) For the purposes of this Article, the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

(11) In this Article, “adoption agency” has the same meaning as in Article 85ZJ.

### **Complaint to industrial tribunal**

**85ZM.**—(1) An employee may present a complaint to an industrial tribunal that his or her employer—

- (a) has unreasonably refused to let him or her take time off as required by Article 85ZJ or 85ZL, or
- (b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 85ZK.

(2) An industrial tribunal may not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the day of the appointment in question, 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 months.

(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it must make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by Article 85ZJ, the tribunal must also order the employer to pay to the employee an amount that is twice the amount of the remuneration to which the employee would have been entitled under Article 85ZK if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under Article 85ZK, the tribunal must also order the employer to pay to the employee the amount which it finds due to the employee.

(6) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by Article 85ZL, the tribunal must also order the employer to pay to the employee an amount determined in accordance with paragraph (7).

(7) The amount payable to the employee is—

$$A \times B \times 2$$



where—

- a A is the appropriate hourly rate for the employee determined in accordance with Article 85ZK(2) to (4), and
- b B is the number of working hours for which the employee would have been entitled under Article 85ZL to be absent if the time off had not been refused.]

*<sup>F13</sup>Adoption appointments: agency workers*

**Right to paid time off to attend adoption appointments: agency workers**

**85ZN.**—(1) An agency worker who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker alone is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An agency worker who—

- (a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker and another person jointly, and
- (b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(3) An agency worker may not make an election for the purposes of paragraph (2)(b) if—

- (a) the agency worker has made an election for the purposes of Article 85ZP(1)(b) in connection with the adoption, or
- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (2)(b) or Article 85ZJ(2)(b) in connection with the adoption.

(4) An agency worker is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the agency worker.

(5) In relation to any particular adoption, an agency worker is not entitled to take time off under this Article on more than five occasions.

(6) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(7) An agency worker is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1) or (2)(a).

(8) An agency worker is not entitled to take time off under paragraph (1) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(9) An agency worker is not entitled to take time off under paragraph (2) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—

- (a) a declaration signed by the agency worker stating that the agency worker has made an election for the purposes of paragraph (2)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

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(10) A document or declaration requested under paragraph (8) or (9) may be given in electronic form.

(11) In cases where more than one child is to be, or is expected to be, placed for adoption with an agency worker as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraphs (1) and (2) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
- (b) the references in paragraphs (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (3) to the adoption were references to any of the adoptions that are part of the arrangement,
- (d) the reference in paragraph (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
- (e) the reference in paragraph (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(12) For the purposes of this Article the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

(13) In this Article “adoption agency” has the same meaning as in Article 85ZJ.

### **Right to remuneration for time off under Article 85ZN**

**85ZO.**—(1) An agency worker who is permitted to take time off under Article 85ZN is entitled to be paid remuneration by the temporary work agency for the number of working hours for which the agency worker is entitled to be absent at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off is taken.

(3) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken.

(4) A right to any amount under paragraph (1) does not affect any right of an agency worker in relation to remuneration under the agency worker's contract with the temporary work agency (“contractual remuneration”).

(5) Any contractual remuneration paid to an agency worker in respect of a period of time off under Article 85ZN goes towards discharging any liability of the temporary work agency to pay remuneration under paragraph (1) in respect of that period.

(6) Any payment of remuneration under paragraph (1) in respect of a period of time off under Article 85ZN goes towards discharging any liability of the temporary work agency to pay contractual remuneration in respect of that period.

### **Right to unpaid time off to attend adoption appointments: agency workers**

**85ZP.**—(1) An agency worker who—

- (a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker and another person jointly, and
  - (b) has elected to exercise the right to take time off under this Article in connection with the adoption,
- is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.
- (2) An agency worker may not make an election for the purposes of paragraph (1)(b) if—
    - (a) the agency worker has made an election for the purposes of Article 85ZN(2)(b) in connection with the adoption, or
    - (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (1)(b) or Article 85ZL(1)(b) in connection with the adoption.
  - (3) An agency worker is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the agency worker.
  - (4) In relation to any particular adoption, an agency worker is not entitled to take time off under this Article on more than two occasions.
  - (5) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.
  - (6) An agency worker is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1)(a).
  - (7) An agency worker is not entitled to take time off under this Article unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—
    - (a) a declaration signed by the agency worker stating that the agency worker has made an election for the purposes of paragraph (1)(b) in connection with the adoption, and
    - (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (6).
  - (8) A declaration or document requested under paragraph (7) may be given in electronic form.
  - (9) In cases where more than one child is to be, or is expected to be, placed for adoption with an agency worker and another person jointly as part of the same arrangement, this Article has effect as if—
    - (a) the purposes specified in paragraph (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
    - (b) the references in paragraphs (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
    - (c) the references in paragraph (2) to the adoption were references to any of the adoptions that are part of the arrangement,
    - (d) the reference in paragraph (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
    - (e) the reference in paragraph (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.
  - (10) For the purposes of this Article the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

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(11) In this Article, “adoption agency” has the same meaning as in Article 85ZJ.

### **Complaint to industrial tribunal: agency workers**

**85ZQ.**—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency—

- (a) has unreasonably refused to let him or her take time off as required by Article 85ZN or 85ZP, or
- (b) has failed to pay the whole or any part of any amount to which the agency worker is entitled under Article 85ZO.

(2) An agency worker may present a complaint to an industrial tribunal that the hirer has unreasonably refused to let him or her take time off as required by Article 85ZN or 85ZP.

(3) An industrial tribunal may not consider a complaint under sub-paragraph (1) or (2) unless it is presented—

- (a) before the end of the period of three months beginning with the day of the appointment in question, 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 months.

(4) Where an industrial tribunal finds a complaint under paragraph (1) or (2) well-founded, it must make a declaration to that effect.

(5) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by Article 85ZN, the tribunal must also order payment to the agency worker of an amount that is twice the amount of the remuneration to which the agency worker would have been entitled under Article 85ZO if the agency worker had not been refused the time off.

(6) If the complaint is that the temporary work agency has failed to pay the agency worker the whole or part of any amount to which the agency worker is entitled under Article 85ZO, the tribunal must also order the temporary work agency to pay to the agency worker the amount which it finds due to the agency worker.

(7) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by Article 85ZP, the tribunal must also order payment to the agency worker of an amount determined in accordance with sub-paragraph (8).

(8) The amount payable to the agency worker under paragraph (7) is—

$$A \times B \times 2$$

where—

- a A is the appropriate hourly rate for the agency worker determined in accordance with Article 85ZO(2) and (3), and
- b B is the number of working hours for which the agency worker would have been entitled under Article 85ZP to be absent if the time off had not been refused.

(9) Where the tribunal orders that payment under paragraph (5) or (7) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

### Agency workers: supplementary

**85ZR.**—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law, Articles 85ZN to 85ZQ do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations (Northern Ireland) 2011, is no longer entitled to the rights conferred by regulation 5 of those Regulations.

(2) Nothing in Articles 85ZN to 85ZQ imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.

(3) Articles 85ZN to 85ZQ do not apply where Articles 85ZJ to 85ZM apply.

(4) In this Article and Articles 85ZN to 85ZQ the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3, 4 and 7 of the regulations)—

- “agency worker”,
- “assignment”,
- “hirer”,
- “qualifying period”,
- “temporary work agency”.

### Entitlement: prospective adopters with whom looked after children are placed

**85ZS.**—(1) Paragraph (3) applies where an authority notifies a person who is an approved foster parent and an approved prospective adopter that a child who is looked after by it is to be, or is expected to be, placed with the person by the authority, in the circumstances mentioned in paragraph (2), under Article 27(2)(a) of the Children (Northern Ireland) Order 1995.

(2) The circumstances are that—

- (a) the authority—
  - (i) is considering adoption for the child, or
  - (ii) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child, and
- (b) such conditions as may be specified in regulations made by the Department are satisfied.

(3) Where this paragraph applies, Articles 85ZJ, 85ZL, 85ZN and 85ZP have effect as if references to adoption, an adoption agency, placement for adoption or placing for adoption were such references as may be specified in regulations made by the Department.

(4) Where a child is placed by an authority as referred to in paragraphs (1) and (2), notification of the person by an adoption agency during the placement that the child is to be, or is expected to be, placed with the person for adoption is not to give rise to a right to time off under Article 85ZJ, 85ZL, 85ZN or 85ZP for the person or another person.

(5) In this Article—

- “adoption agency” has the same meaning as in Article 85ZJ,
- “approved foster parent” means a person approved as a foster parent by the authority under regulation 3 of the Foster Placement (Children) Regulations (Northern Ireland) 1996,

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“approved prospective adopter” means a person considered by the authority by virtue of the Adoption Agencies Regulations (Northern Ireland) 1989 to be a person suitable to adopt a child,

“authority” has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 2(2) and (3) of the Order),

“child who is looked after by an authority” has the same meaning as in that Order (see Articles 2(7)(b) and 25 of the Order).

(6) The Department may by order amend the definition of, or substitute another definition for the definition of, “approved foster parent” or “approved prospective adopter” for the time being contained in paragraph (5), in consequence of any modification or replacement of the regulations referred to in the definition.]

### *[<sup>F14</sup>Dependants*

**F14** 1999 NI 9

#### **Time off for dependants**

**85A.**—(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary—

- (a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,
- (b) to make arrangements for the provision of care for a dependant who is ill or injured,
- (c) in consequence of the death of a dependant,
- (d) because of the unexpected disruption or termination of arrangements for the care of a dependant, or
- (e) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him.

(2) Paragraph (1) does not apply unless the employee—

- (a) tells his employer the reason for his absence as soon as reasonably practicable, and
- (b) except where paragraph (a) cannot be complied with until after the employee has returned to work, tells his employer for how long he expects to be absent.

(3) Subject to paragraphs (4) and (5), for the purposes of this Article “dependant” means, in relation to an employee—

- (a) a spouse<sup>[F15]</sup> or civil partner],
- (b) a child,
- (c) a parent,
- (d) a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder.

(4) For the purposes of paragraph (1)(a) or (b) “dependant” includes, in addition to the persons mentioned in paragraph (3), any person who reasonably relies on the employee—

- (a) for assistance on an occasion when the person falls ill or is injured or assaulted, or
- (b) to make arrangements for the provision of care in the event of illness or injury.

(5) For the purposes of paragraph (1)(d) “dependant” includes, in addition to the persons mentioned in paragraph (3), any person who reasonably relies on the employee to make arrangements for the provision of care.

(6) A reference in this Article to illness or injury includes a reference to mental illness or injury.

F15 2004 c.33

### Complaint to industrial tribunal

**85B.**—(1) An employee may present a complaint to an industrial tribunal that his employer has unreasonably refused to permit him to take time off as required by Article 85A.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the date when the refusal occurred, 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 months.

(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the employee.

(4) The amount of 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 time off to be taken by the employee, and
- (b) any loss sustained by the employee which is attributable to the matters complained of.]

### *Occupational pension scheme trustees*

### Right to time off for pension scheme trustees

**86.**—(1) The employer in relation to a relevant occupational pension scheme shall permit an employee of his who is a trustee of the scheme to take time off during the employee's working hours for the purpose of—

- (a) performing any of his duties as such a trustee, or 88
- (b) undergoing training relevant to the performance of those duties.

(2) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard, in particular, to—

- (a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or for undergoing the particular training, and
- (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

[<sup>F16</sup>(2A) This Article applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).]

(3) In this Article—

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- (a) “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993) established under a trust, and
  - (b) references to the employer, in relation to such a scheme, are to an employer of persons in the description<sup>F17</sup> or category of employment to which the scheme relates<sup>F18</sup>, and]
  - <sup>F18</sup>(c) references to training are to training on the employer's premises or elsewhere.]
- (4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

**F16** 1999 NI 11

**F17** prosp. rep. by 2005 NI 1

**F18** 1998 NI 15

### **Right to payment for time off under Article 86**

**87.**—(1) An employer who permits an employee to take time off under Article 86 shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in paragraph (3) are—

- (a) those of the employee concerned, or
- (b) if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 86 goes towards discharging any liability of the employer under paragraph (1) in respect of that period; and, conversely, any payment under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **Complaints to industrial tribunals**

**88.**—(1) An employee may present a complaint to an industrial tribunal that his employer—

- (a) has failed to permit him to take time off as required by Article 86, or
- (b) has failed to pay him in accordance with Article 87.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the date when the failure occurred, 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 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 employee.

(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 failing to permit time off to be taken by the employee, and
- (b) any loss sustained by the employee 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 an employee in accordance with Article 87, it shall order the employer to pay the amount which it finds to be due.

### *Employee representatives*

#### **Right to time off for employee representatives**

**89.**—(1) An employee who is—

- (a) an employee representative for the purposes of Part XIII of this Order or [F19]regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006[F20]or regulations 9, 13 and 15 of the Service Provision Change (Protection of Employment) Regulations 2006], or
- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such an employee representative or candidate[F21] or in order to undergo training to perform such functions].

(2) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

**F19** Words in art. 89(1)(a) substituted (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 20(3), **Sch. 2 para. 11(b)** (with reg. 21(1), Sch. 1 para. 3)

**F20** Words in art. 89(1)(a) inserted (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), reg. 20(1), **Sch. 1 para. 2(b)**

**F21** SR 1999/432

#### **Right to remuneration for time off under Article 89**

**90.**—(1) An employee who is permitted to take time off under Article 89 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or

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- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.
- (4) The considerations referred to in paragraph (3)(b) are—
  - (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and
  - (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.
- (5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 89 goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **Complaints to industrial tribunals**

- 91.**—(1) An employee may present a complaint to an industrial tribunal that his employer—
- (a) has unreasonably refused to permit him to take time off as required by Article 89, or
  - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 90.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, 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 months.
- (3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall make a declaration to that effect.
- (4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under Article 90 if the employer had not refused.
- (5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under Article 90, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.

*f<sup>F22</sup> Study or training*

**F22** 1998 NI 15

### **Right to time off for young person for study or training**

- 91A.**—(1) An employee who—
- (a) is aged 16 or 17,
  - (b) is not receiving full-time secondary or further education, and

(c) has not attained such standard of achievement as is prescribed by regulations made by the Department with the approval of the Department of Education,  
is entitled to be permitted by his employer to take time off during the employee's working hours in order to undertake study or training leading to a relevant qualification.

(2) In this Article—

- (a) “secondary education” has the same meaning as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986;
- (b) “further education” has the same meaning as in Article 3 of the Further Education (Northern Ireland) Order 1997; and
- (c) “relevant qualification” means an external qualification the attainment of which—
  - (i) would contribute to the attainment of the standard prescribed for the purposes of paragraph (1)(c), and
  - (ii) would be likely to enhance the employee's employment prospects (whether with his employer or otherwise);

and for the purposes of sub-paragraph (c) “external qualification” means an academic or vocational qualification awarded or authenticated by such person or body as may be specified in or under regulations made by the Department with the approval of the Department of Education.

(3) An employee who—

- (a) satisfies the requirements of sub-paragraphs (a) to (c) of paragraph (1), and
- (b) is for the time being supplied by his employer to another person ( “the principal”) to perform work in accordance with a contract made between the employer and the principal,

is entitled to be permitted by the principal to take time off during the employee's working hours in order to undertake study or training leading to a relevant qualification.

(4) Where an employee—

- (a) is aged 18,
- (b) is undertaking study or training leading to a relevant qualification, and
- (c) began such study or training before attaining that age,

paragraphs (1) and (3) shall apply to the employee, in relation to that study or training, as if “ or 18 ” were inserted at the end of paragraph (1)(a).

(5) The amount of time off which an employee is to be permitted to take under this Article, and the occasions on which and any conditions subject to which time off may be so taken, are those that are reasonable in all the circumstances having regard, in particular, to—

- (a) the requirements of the employee's study or training, and
- (b) the circumstances of the business of the employer or the principal and the effect of the employee's time off on the running of that business.

(6) References in this Article to study or training are references to study or training on the premises of the employer or (as the case may be) principal or elsewhere.

(7) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

#### [<sup>F23</sup>Right to remuneration for time off under Article 91A

**91B.**—(1) An employee who is permitted to take time off under Article 91A is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

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(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

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

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment ( “contractual remuneration”).

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 91A goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.]

**F23** 1998 NI 15

### **Complaints to industrial tribunals**

**91C.**—(1) An employee may present a complaint to an industrial tribunal that—

- (a) his employer, or the principal referred to in paragraph (3) of Article 91A, has unreasonably refused to permit him to take time off as required by that Article, or
- (b) his employer has failed to pay the whole or any part of any amount to which the employee is entitled under Article 91B.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, 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 months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer or the principal has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer or the principal, as the case may be, to pay to the employee an amount equal to the remuneration to which he would have been entitled under Article 91B if the employer or the principal had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under Article 91B, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.]

*[<sup>F24</sup>Trade union duties and activities*

**F24** 1998 NI 15

**Right to time off for carrying out trade union duties**

**92.**—(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with—

- (a) negotiations with the employer related to or connected with matters falling within Article 96(1) of the 1992 Order in relation to which the trade union is recognised by the employer, or
- (b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union<sup>F25</sup>, or
  - [ receipt of information from the employer and consultation by the employer under Article <sup>F25</sup>(c) 216 or under the Transfer of Undertakings (Protection of Employment) Regulations 1981]
  - [ negotiations with a view to entering into an agreement under regulation 9 of the Transfer <sup>F26</sup>(d) of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer, or
  - (e) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation [<sup>F27</sup>;]]
  - [ negotiations with a view to entering into an agreement under regulation 9 of the Service <sup>F28</sup>(f) Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 that applies to employees of the employer, or
  - (g) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation.]

(2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations—

- (a) relevant to the carrying out of such duties as are mentioned q in paragraph (1), and
- (b) approved by the Northern Ireland Committee of the Irish Congress of Trade Unions or by the independent trade union of which he is an official.

(3) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

**F25** SR 1999/432

**F26** Art. 92(1)(d)(e) inserted (6.4.2006) by virtue of [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 9(4), **Sch. 1 para. 6** (with reg. 21(1), Sch. 1 para. 3)

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**F27** Word in art. 92(1)(e) substituted (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 9(4)**

**F28** Art. 92(1)(f)(g) inserted (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 9(4)**

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

**C1** Art. 92(3) applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 para. 9(6)** (with reg. 50)

**C2** Art. 92(4) applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 para. 9(6)** (with reg. 50)

**[<sup>F29</sup>Time off for union learning representatives**

**92A.—**(1) An employer shall permit an employee of his who is—

- (a) a member of an independent trade union recognised by the employer, and
- (b) a learning representative of the trade union,

to take time off during his working hours for any of the following purposes.

(2) The purposes are—

- (a) carrying on any of the following activities in relation to qualifying members of the trade union—
  - (i) analysing learning or training needs,
  - (ii) providing information and advice about learning or training matters,
  - (iii) arranging learning or training, and
  - (iv) promoting the value of learning or training,
- (b) consulting the employer about carrying on any such activities in relation to such members of the trade union,
- (c) preparing for any of the things mentioned in paragraphs (a) and (b).

(3) Paragraph (1) only applies if—

- (a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and
- (b) the training condition is met in relation to him.

(4) The training condition is met if—

- (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in paragraph (2), and the trade union has given the employer notice in writing of that fact,
- (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
- (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.

(5) Only one notice under paragraph (4)(b) may be given in respect of any one employee.

(6) References in paragraph (4) to sufficient training to carry out the activities mentioned in paragraph (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by the Agency or the Department.

(7) If an employer is required to permit an employee to take time off under paragraph (1), he shall also permit the employee to take time off during his working hours for the following purposes—

- (a) undergoing training which is relevant to his functions as a learning representative, and
- (b) where the trade union has in the last six months given the employer notice under paragraph (4)(b) in relation to the employee, undergoing such training as is mentioned in paragraph (4)(a).

(8) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by the Agency or the Department.

(9) In paragraph (2)(a), the reference to qualifying members of the trade union is to members of the trade union—

- (a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
- (b) in relation to whom it is the function of the union learning representative to act as such.

(10) For the purposes of this Article—

- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules;
- (b) the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

(11) The Department may by order amend the preceding provisions of this Article for the purpose of changing the purposes for which an employee may take time off under this Article.]

F29 2003 NI 15

## Right to remuneration for time off under Article 92

**93.**—(1) An employer who permits an employee to take time off under Article 92<sup>[F30]</sup> or 92A] shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in paragraph (3) are—

- (a) those of the employee concerned, or
- (b) if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 92<sup>[F30]</sup> or 92A] goes towards discharging any liability of the employer under paragraph (1) in respect of that period; and, conversely, any payment under paragraph (1) in respect of a period

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goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

**F30** 2003 NI 15

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

**C3** Art. 93 applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 para. 9(6)** (with reg. 50)

**Right to time off for trade union activities**

**94.**—(1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in—

- (a) any activities of the union, and
- (b) any activities in relation to which the employee is acting as a representative of the union.

(2) The right conferred by paragraph (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.

[  
<sup>F31</sup>(2A) The right conferred by paragraph (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.

(2B) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of having access to services provided by a person in his capacity as a learning representative of the trade union.

(2C) Paragraph (2B) only applies if the learning representative would be entitled to time off under paragraph (1) of Article 92A for the purpose of carrying on in relation to the employee activities of the kind mentioned in paragraph (2) of that Article.]

(3) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

[  
<sup>F31</sup>(5) For the purposes of this Article—

- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and
- (b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in Article 92A(2) in that capacity.]

**F31** 2003 NI 15

**Complaints to industrial tribunals**

**95.**—(1) An employee may present a complaint to an industrial tribunal that his employer—

- (a) has failed to permit him to take time off as required by Article 92<sup>[F32]</sup>, 92A] or 94, or



- (b) has failed to pay him in accordance with Article 93.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
  - (a) before the end of the period of three months beginning with the date when the failure occurred, 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 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 employee.
- (4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard
  - (a) the employer's default in failing to permit time off to be taken by the employee, and
  - (b) any loss sustained by the employee 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 an employee in accordance with Article 93, it shall order the employer to pay the amount which it finds to be due.]

**F32** 2003 NI 15

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

**C4** Art. 95 applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 para. 9(6)** (with reg. 50)

**Status:**

Point in time view as at 05/04/2015.

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations.