

## SCHEDULES

### SCHEDULE 2 <sup>F1</sup>

#### RIGHTS OF SHOP WORKERS AS RESPECTS SUNDAY WORKING

<b>F1</b> functions transf. by SR 1999/481
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#### *Right not to suffer detriment for refusing Sunday work*

**10.**—(1) An employee who is a protected shop worker or an opted-out shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee refused (or proposed to refuse) to do shop work on Sunday or on a particular Sunday.

(2) Sub-paragraph (1) does not apply to anything done in relation to an opted-out shop worker on the ground that he refused (or proposed to refuse) to do shoe work on any Sunday or Sundays falling before the end of the notice period.

(3) An employee who is a shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee gave (or proposed to give) an opting-out notice to his employer.

(4) Sub-paragraphs (1) and (3) do not apply where the detriment in question amounts to dismissal (within the meaning of Part XI of the Employment Rights Order).

(5) For the purposes of this paragraph a shop worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—

- (a) a failure to pay remuneration in respect of shop work on a Sunday which he has not done,
- (b) a failure to provide him with any other benefit, where that failure results from the application (in relation to a Sunday on which the employee has not done shop work) of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee; or
- (c) a failure to provide him with any work, remuneration or other benefit which by virtue of paragraph 4 or 5 the employer is not obliged to provide.

(6) Where an employer offers to pay a sum specified in the offer to any one or more employees—

- (a) who are protected shop workers or opted-out shop workers; or
- (b) who under their contracts of employment are not obliged to do shop work on Sunday,

if they agree to do shop work on Sunday or on a particular Sunday sub-paragraphs (7) and (8) apply.

(7) An employee to whom the offer is not made is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to make the offer to him or to pay him the sum specified in the offer.

(8) An employee who does not accept the offer is not to be regarded for the purposes of this paragraph as having been subjected to any detriment by any failure to pay him the sum specified in the offer.

**Changes to legislation:** There are currently no known outstanding effects for the *The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997*, Cross Heading: *Right not to suffer detriment for refusing Sunday work.* (See end of Document for details)

(9) For the purposes of paragraph 2(2)(b) or 7(1)(b), the appropriate date in relation to this paragraph is the date of the act or failure to act.

(10) For the purposes of sub-paragraph (9)—

(a) where an act extends over a period, the “date of the act” means the first day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(11) Articles 71 and 72 of the Employment Rights Order (which relate to proceedings brought by an employee<sup>F1</sup> or, as the case may be, worker] on the ground that he has been subjected to a detriment in contravention of Article 68,<sup>F2</sup> 69,<sup>F1</sup> 70, 70A or 70B]] of that Order) shall have effect as if the reference in Article 71 to those Articles included a reference to this paragraph.

(12) Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation) has effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings, arising out of a contravention or alleged contravention of this paragraph.

(13) The remedy of an employee for infringement of the right conferred by this paragraph is by way of proceedings as mentioned in sub-paragraph (11) and not otherwise.

*Sub#para. (14) rep. by 1999 NI 9*

(15) Articles 248 and 249 of the Employment Rights Order (death of employee or employer) applies in relation to this paragraph as they apply in relation to provisions of the Employment Rights Order listed in Article 248(2) of that Order.

**F1** 1998 NI 17

**F2** 1998 NI 15

**Changes to legislation:**

There are currently no known outstanding effects for the The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997, Cross Heading: Right not to suffer detriment for refusing Sunday work.