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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 49**

**The Working Time Regulations (Northern Ireland) 2016**

**PART 3**

Exceptions

**Excluded sectors**

22.—(1) These Regulations do not apply—

- (a) to workers to whom the Merchant Shipping (Hours of Work) Regulations 2002 <sup>M1</sup> apply;
- (b) to workers to whom the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 <sup>M2</sup> apply;
- (c) to workers to whom the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 <sup>M3</sup> apply.

(2) Regulations 4(1) and (2), 7(1), (2) and (6), 9(1) and (6), 10, 12(1), 13(1) and (2), 14(1), 15, 16 and 20 do not apply—

- (a) where characteristics peculiar to certain specific services such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with the provisions of these Regulations; or
- (b) to workers to whom the European Agreement on the organisation of working time of mobile staff in civil aviation concluded on 22nd March 2000 and implemented by Council Directive 2000/79/EC of 27th November 2000 <sup>M4</sup> applies.

(3) Regulations 4(1) and (2), 7(1), (2) and (6), 10, 12(1), 13(1) and (2) and 14(1) do not apply to workers to whom Directive 2002/15/EC of the European Parliament and of the Council, on the organisation of working time of persons performing mobile road transport activities, dated 11th March 2002 <sup>M5</sup> applies.

(4) Regulation 28 does not apply to workers to whom the Cross-border Railways Services (Working Time) Regulations (Northern Ireland) 2008 <sup>M6</sup> apply.

**Marginal Citations**

- M1** S.I. 2002/2125
- M2** S.I. 2004/1713
- M3** S.I. 2003/3049
- M4** O.J. No. L302, 1.12.00, p. 57
- M5** O.J. No. L80, 23.3.02, p. 35
- M6** S.R 2008 No. 315

**Domestic service**

23. Regulations 4(1) and (2), 6(1) and (4), 7(1), (2) and (6), 8, 9(1), (2) and (6) and 10 do not apply in relation to a worker employed as a domestic servant in a private household.

**Unmeasured working time**

24. Regulations 4(1) and (2), 7(1), (2) and (6), 12(1), 13(1) and (2) and 14(1) do not apply in relation to a worker where, on account of the specific characteristics of the activity in which the worker is engaged, the duration of the worker's working time is not measured or predetermined or can be determined by the worker, as may be the case for—

- (a) managing executives or other persons with autonomous decision-taking powers;
- (b) family workers; or
- (c) workers officiating at religious ceremonies in churches and religious communities.

**Other special cases**

25. Subject to regulation 28, regulations 7(1), (2) and (6), 12(1), 13(1) and (2) and 14(1) do not apply in relation to a worker—

- (a) where the worker's activities are such that the worker's place of work and place of residence are distant from one another, including cases where the worker is employed in offshore work, or the worker's different places of work are distant from one another;
- (b) where the worker is engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons, as may be the case for security guards and caretakers or security firms;
- (c) where the worker's activities involve the need for continuity of service or production, as may be the case in relation to—
  - (i) services relating to the reception, treatment or care provided by hospitals or similar establishments (including the activities of doctors in training), residential institutions and prisons;
  - (ii) work at docks or airports;
  - (iii) press, radio, television, cinematographic production, postal and telecommunications services and civil protection services;
  - (iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration;
  - (v) industries in which work cannot be interrupted on technical grounds;
  - (vi) research and development activities;
  - (vii) agriculture;
  - (viii) the carriage of passengers on regular urban transport services;
- (d) where there is a foreseeable surge of activity, as may be the case in relation to—
  - (i) agriculture;
  - (ii) tourism; and
  - (iii) postal services;
- (e) where the worker's activities are affected by—
  - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of the employer;

- (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer; or
- (iii) an accident or the imminent risk of an accident;
- (f) where the worker works in railway transport and—
  - (i) the worker's activities are intermittent;
  - (ii) the worker spends working time on board trains; or
  - (iii) the worker's activities are linked to transport timetables and to ensuring the continuity and regularity of traffic.

### Shift workers

26.—(1) Subject to regulation 28—

- (a) regulation 12(1) does not apply in relation to a shift worker when the worker changes shift and cannot take a daily rest period between the end of one shift and the start of the next one;
  - (b) paragraphs (1) and (2) of regulation 13 do not apply in relation to a shift worker when the worker changes shift and cannot take a weekly rest period between the end of one shift and the start of the next one; and
  - (c) neither regulation 12(1) nor paragraphs (1) and (2) of regulation 13 apply to workers engaged in activities involving periods of work split up over the day, as may be the case for cleaning staff.
- (2) For the purposes of this regulation—

“shift worker” means any worker whose work schedule is part of shift work; and

“shift work” means any method of organising work in shifts whereby workers succeed each other at the same workstations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks.

### Collective and workforce agreements

27. A collective agreement or a workforce agreement may—

- (a) modify or exclude the application of regulations 7(1) to (3) and (6), 12(1), 13(1) and (2) and 14(1), and
- (b) for objective or technical reasons or reasons concerning the organisation of work, modify the application of regulation 4(3) and (4) by the substitution, for each reference to 17 weeks, of a different period, being a period not exceeding 52 weeks,

in relation to particular workers or groups of workers.

### Compensatory rest

28. Where the application of any provision of these Regulations is excluded by regulation 25 or 26, or is modified or excluded by means of a collective agreement or a workforce agreement under regulation 27(a), and a worker is accordingly required by the employer to work during a period which would otherwise be a rest period or rest break—

- (a) the employer shall wherever possible allow the worker to take an equivalent period of compensatory rest, and

- (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, the employer shall afford the worker such protection as may be appropriate in order to safeguard the worker's health and safety.

### **Mobile workers**

**29.**—(1) Regulations 7(1), (2) and (6), 12(1), 13(1) and (2) and 14(1) do not apply to a mobile worker in relation to whom the application of those regulations is not excluded by any provision of regulation 22.

(2) A mobile worker, to whom paragraph (1) applies, is entitled to adequate rest, except where the worker's activities are affected by any of the matters referred to in regulation 25(e).

(3) For the purposes of this regulation “adequate rest” means that a worker has regular rest periods, the duration of which are expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, injury is not caused to the worker, to fellow workers or to others and that the health of the worker is not damaged, either in the short term or in the longer term.

### **Workers in the armed forces**

**30.**—(1) Regulation 11 does not apply in relation to a worker serving as a member of the armed forces.

(2) Regulations 6, 8, 12(2) and 13(3) do not apply in relation to a young worker serving as a member of the armed forces.

(3) In a case where a young worker serving as a member of the armed forces is accordingly required to work during the restricted period, or is not permitted the minimum rest period provided for in regulation 12(2) or 13(3), the young worker shall be allowed an appropriate period of compensatory rest.

### **Doctors in training**

**31.**—(1) In the case of workers who are doctors in training, paragraphs (3) to (5) of regulation 4 shall not apply and paragraphs (2) and (3) of this regulation shall apply in their place.

(2) Subject to paragraph (3), the reference period which applies in the case of a worker who is a doctor in training is—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 26 weeks, each such period; and
- (b) in any other case, any period of 26 weeks in the course of the worker's employment.

(3) Where a doctor in training has worked for an employer for less than 26 weeks, the reference period applicable is the period that has elapsed since the worker started work for the employer.

### **Workers employed in offshore work**

**32.**—(1) In the case of workers employed in offshore work, paragraphs (3) to (5) of regulation 4 shall not apply and paragraphs (2) and (3) of this regulation shall apply in their place.

(2) Subject to paragraph (3), the reference period which applies in the case of a worker employed in offshore work is—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 52 weeks, each such period; and
- (b) in any other case, any period of 52 weeks in the course of the worker's employment.

(3) Where a worker employed in offshore work has worked for an employer for less than 52 weeks, the reference period applicable is the period that has elapsed since the worker started work for the employer.

#### **Entitlement to additional annual leave under a relevant agreement**

**33.**—(1) Regulation 16 does not apply in relation to a worker whose employer, by virtue of a relevant agreement, provides each worker with an annual leave entitlement of 1.6 weeks or 8 days (whichever is the lesser) in addition to each worker's entitlement under regulation 15, provided that such additional annual leave—

- (a) may not be replaced by a payment in lieu except in relation to a worker whose employment is terminated;
- (b) may not be carried forward into a leave year other than that which immediately follows the leave year in respect of which the leave is due; and
- (c) is leave for which the worker is entitled to be paid at not less than the rate of a week's pay in respect of each week of leave, calculated in accordance with Articles 17 to 20 of the 1996 Order, modified such that—
  - (i) references to the employee are references to the worker;
  - (ii) references to the employee's contract of employment are references to the worker's contract;
  - (iii) the calculation date is the first day of the period of leave in question; and
  - (iv) the references to Articles 23 and 24 do not apply.

(2) Notwithstanding paragraph (1), any additional annual leave in excess of 1.6 weeks or 8 days (whichever is the lesser) to which a worker is entitled, shall not be subject to the conditions of that paragraph.

(3) This regulation shall cease to apply to a worker from the day when an employer ceases to provide additional annual leave in accordance with the conditions in paragraph (1).

#### **Young workers: force majeure**

**34.**—(1) Regulations 6, 8, 12(2) and 14(4) do not apply in relation to a young worker where the employer requires the young worker to undertake work which no adult worker is available to perform and which—

- (a) is occasioned by either—
  - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the employer's control, or
  - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer;
- (b) is of a temporary nature; and
- (c) must be performed immediately.

(2) Where the application of regulation 6, 8, 12(2) or 14(4) is excluded by paragraph (1), and a young worker is accordingly required to work during a period which would otherwise be a rest period or rest break, the employer shall allow the young worker to take an equivalent period of compensatory rest within the following three weeks.

#### **Other exceptions relating to young workers**

**35.**—(1) Regulation 6 does not apply in relation to a young worker where—

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**Status:** Point in time view as at 28/02/2016.

**Changes to legislation:** There are currently no known outstanding effects for the The Working Time Regulations (Northern Ireland) 2016, PART 3. (See end of Document for details)

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- (a) the employer requires the young worker to undertake work which is necessary either to maintain continuity of service or production or to respond to a surge in demand for a service or product;
  - (b) no adult worker is available to perform the work; and
  - (c) performing the work would not adversely affect the young worker's education or training.
- (2) Regulation 8 does not apply in relation to a young worker employed—
- (a) in a hospital or similar establishment, or
  - (b) in connection with cultural, artistic, sporting or advertising activities,
- in the circumstances referred to in paragraph (1).
- (3) Regulation 8 does not apply, except in so far as it prohibits work between midnight and 4 a.m., in relation to a young worker employed in—
- (a) agriculture;
  - (b) retail trading;
  - (c) postal or newspaper deliveries;
  - (d) a catering business;
  - (e) a hotel, public house, restaurant, bar or similar establishment; or
  - (f) a bakery,
- in the circumstances referred to in paragraph (1).
- (4) Where the application of regulation 8 is excluded by paragraph (2) or (3), and a young worker is accordingly required to work during a period which would otherwise be a rest period or rest break—
- (a) the young worker shall be supervised by an adult worker where such supervision is necessary for the young worker's protection; and
  - (b) the young worker shall be allowed an equivalent period of compensatory rest.

**Status:**

Point in time view as at 28/02/2016.

**Changes to legislation:**

There are currently no known outstanding effects for the The Working Time Regulations (Northern Ireland) 2016, PART 3.