

STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

[^{F1}PART IXA

FLEXIBLE WORKING

F1 2002 NI 2

Statutory right to request contract variation

112F.—(1) A qualifying employee may apply to his employer for a change in his terms and conditions of employment if—

- (a) the change relates to—
 - (i) the hours he is required to work,
 - (ii) the times when he is required to work,
 - (iii) where, as between his home and a place of business of his employer, he is required to work, or
 - (iv) such other aspect of his terms and conditions of employment as the Department may specify by regulations, ^{F2}...

^{F3}(b)

(2) An application under this Article must—

- (a) state that it is such an application,
- (b) specify the change applied for and the date on which it is proposed the change should become effective, [^{F4}and]
- (c) explain what effect, if any, the employee thinks making the change applied for would have on his employer and how, in his opinion, any such effect might be dealt with, ^{F5}...

^{F6}(d)

(3) ^{F7}

(4) If an employee has made an application under this Article, he may not make a further application under this Article to the same employer before the end of the period of twelve months beginning with the date on which the previous application was made.

(5) The Department may by regulations make provision about—

- (a) the form of applications under this Article, and
- (b) when such an application is to be taken as made.

(6) ^{F8}

(7) ^{F9}

Status: Point in time view as at 05/04/2015.

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- (8) For the purposes of this Article, an employee is—
 - (a) a qualifying employee if he—
 - (i) satisfies such conditions as to duration of employment as the Department may specify by regulations, and
 - (ii) is not an agency worker ^{F10}(other than an agency worker who is returning to work from a period of parental leave under regulations under Article 108)];
 - (b) an agency worker if he is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangement made between the agent and the principal.
- ^{F11}(9)

F2	Word in art. 112F(1)(a) repealed (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 19(2)(a), 23(1), Sch. 2 ; S.R. 2015/86, art. 4(1)(g)(3) (with art. 7(2)(3))
F3	Art. 112F(1)(b) repealed (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 19(2)(b), 23(1), Sch. 2 ; S.R. 2015/86, art. 4(1)(g)(3) (with art. 7(2)(3))
F4	Word in art. 112F(2)(b) inserted (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 19(3)(a), 23(1) ; S.R. 2015/86, art. 4(1)(g) (with art. 7(3))
F5	Word in art. 112F(2)(c) repealed (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 19(3)(b), 23(1), Sch. 2 ; S.R. 2015/86, art. 4(1)(g)(3) (with art. 7(2)(3))
F6	Art. 112F(2)(d) repealed (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 19(3)(c), 23(1), Sch. 2 ; S.R. 2015/86, art. 4(1)(g)(3) (with art. 7(2)(3))
F7	Art. 112F(3) repealed (6.4.2007) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) , arts. 1(3), 14(4), 17, Sch. 2 ; S.R. 2006/344, art. 4
F8	Art. 112F(6) repealed (6.4.2007) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) , arts. 1(3), 14(4), 17, Sch. 2 ; S.R. 2006/344, art. 4
F9	Art. 112F(7) repealed (6.4.2007) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) , arts. 1(3), 14(4), 17, Sch. 2 ; S.R. 2006/344, art. 4
F10	Words in art. 112F(8)(a)(ii) inserted (8.3.2013) by The Parental Leave (EU Directive) (Flexible Working) Regulations (Northern Ireland) 2013 (S.R. 2013/26) , regs. 1, 2
F11	Art. 112F(9) repealed (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 19(4), 23(1), Sch. 2 ; S.R. 2015/86, art. 4(1)(g)(3) (with art. 7(2)(3))

Employer's duties in relation to application under Article 112F

- 112G.**—(1) An employer to whom an application under Article 112F is made—
- (a) shall deal with the application in accordance with regulations made by the Department, and
 - (b) shall only refuse the application because he considers that one or more of the following grounds applies—
 - (i) the burden of additional costs,
 - (ii) detrimental effect on ability to meet customer demand,
 - (iii) inability to re-organise work among existing staff,
 - (iv) inability to recruit additional staff,
 - (v) detrimental impact on quality,
 - (vi) detrimental impact on performance,
 - (vii) insufficiency of work during the periods the employee proposes to work,
 - (viii) planned structural changes, and
 - (ix) such other grounds as the Department may specify by regulations.

- (2) Regulations under paragraph (1)(a) shall include—
- (a) provision for the holding of a meeting between the employer and the employee to discuss an application under Article 112F within twenty-eight days after the date the application is made;
 - (b) provision for the giving by the employer to the employee of notice of his decision on the application within fourteen days after the date of the meeting under sub-paragraph (a);
 - (c) provision for notice under sub-paragraph (b) of a decision to refuse the application to state the grounds for the decision;
 - (d) provision for the employee to have a right, if he is dissatisfied with the employer's decision, to appeal against it within fourteen days after the date on which notice under sub-paragraph (b) is given;
 - (e) provision about the procedure for exercising the right of appeal under sub-paragraph (d), including provision requiring the employee to set out the grounds of appeal;
 - (f) provision for notice under sub-paragraph (b) to include such information as the regulations may specify relating to the right of appeal under sub-paragraph (d);
 - (g) provision for the holding, within fourteen days after the date on which notice of appeal is given by the employee, of a meeting between the employer and the employee to discuss the appeal;
 - (h) provision for the employer to give the employee notice of his decision on any appeal within fourteen days after the date of the meeting under sub-paragraph (g);
 - (i) provision for notice under sub-paragraph (h) of a decision to dismiss an appeal to state the grounds for the decision;
 - (j) provision for a statement under sub-paragraph (c) or (i) to contain a sufficient explanation of the grounds for the decision;
 - (k) provision for the employee to have a right to be accompanied at meetings under sub-paragraph (a) or (g) by a person of such description as the regulations may specify;
 - (l) provision for postponement in relation to any meeting under sub-paragraph (a) or (g) which a companion under sub-paragraph (k) is not available to attend;
 - (m) provision in relation to companions under sub-paragraph (k) corresponding to Article 12(6) and (7) of the Employment Relations (Northern Ireland) Order 1999 (NI 9) (right to paid time off to act as companion, etc.);
 - (n) provision, in relation to the rights under sub-paragraphs (k) and (l), for the application (with or without modification) of Articles 13 to 15 of the Employment Relations (Northern Ireland) Order 1999 (provisions ancillary to right to be accompanied under Article 12 of that Order).
- (3) Regulations under paragraph (1)(a) may include—
- (a) provision for any requirement of the regulations not to apply where an application is disposed of by agreement or withdrawn;
 - (b) provision for extension of a time limit where the employer and employee agree, or in such other circumstances as the regulations may specify;
 - (c) provision for applications to be treated as withdrawn in specified circumstances.
- (4) The Department may by order amend paragraph (2).

Complaints to industrial tribunals

112H.—(1) An employee who makes an application under Article 112F may present a complaint to an industrial tribunal—

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- (a) that his employer has failed in relation to the application to comply with Article 112G(1),
or
 - (b) that a decision by his employer to reject the application was based on incorrect facts.
- (2) No complaint under this Article may be made in respect of an application which has been disposed of by agreement or withdrawn.
- (3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under this Article may be made until the employer—
- (a) notifies the employee of a decision to reject the application on appeal, or
 - (b) commits a breach of regulations under Article 112G(1)(a) of such description as the Department may specify by regulations.
- (4) No complaint under this Article may be made in respect of failure to comply with provision included in regulations under paragraph (1)(a) of Article 112G because of paragraph (2)(k), (l) or (m) of that Article.
- (5) 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 relevant date, 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.
- (6) In paragraph (5)(a), the reference to the relevant date is—
- (a) in the case of a complaint permitted by paragraph (3)(a), the date on which the employee is notified of the decision on the appeal, and
 - (b) in the case of a complaint permitted by paragraph (3)(b), the date on which the breach concerned was committed.

Remedies

112I.—(1) Where an industrial tribunal finds a complaint under Article 112H well-founded it shall make a declaration to that effect and may—

- (a) make an order for reconsideration of the application, and
 - (b) make an award of compensation to be paid by the employer to the employee.
- (2) The amount of compensation shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances.
- (3) For the purposes of paragraph (2), the permitted maximum is such number of weeks' pay as the Department may specify by regulations.
- (4) Where an industrial tribunal makes an order under paragraph (1)(a), Article 112G, and the regulations under that Article, shall apply as if the application had been made on the date of the order.]

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