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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 49**

**EMPLOYMENT**

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

*Laid before the Assembly in draft*

*Made - - - - 18th February 2016*

*Coming into operation 28th February 2016*

The Department for Employment and Learning, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> (being a Department designated for the purposes of that section in relation to measures relating to the organisation of working time<sup>(2)</sup>, measures relating to the employment of children and young persons<sup>(3)</sup> and measures relating to mediation<sup>(4)</sup>) and Article 15 of the Work and Families (Northern Ireland) Order 2006<sup>(5)</sup>, makes the following Regulations:

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Working Time Regulations (Northern Ireland) 2016 and shall come into operation on 28th February 2016.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(6)</sup>, except section 39(2), shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

“the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996<sup>(7)</sup>;

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(1) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7)

(2) S.I. 1997/1174

(3) S.I. 1996/266

(4) S.I. 2010/2690

(5) S.I. 2006/1947 (N.I. 16); Article 15 was amended by section 20 of the Work and Families Act (Northern Ireland) 2015 (2015 c.1 (N.I.))

(6) 1954 c. 33 (N.I.)

(7) S.I. 1996/1919 (N.I. 16)

“adult worker” means a worker who has attained the age of 18;

“the armed forces” means any of the naval, military and air forces of the Crown;

“calendar year” means the period of twelve months beginning with 1st January in any year;

“the civil protection services” includes the police, fire services and ambulance services, the security and intelligence services, customs and immigration officers, the prison service, the coastguard, and lifeboat crew and other voluntary rescue services;

“collective agreement” means a collective agreement within the meaning of Article 2 of the Industrial Relations (Northern Ireland) Order 1992<sup>(8)</sup>, the trade union parties to which are independent trade unions within the meaning of that Article;

“day” means a period of 24 hours beginning at midnight;

“employer”, in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed;

“employment”, in relation to a worker, means employment under the worker’s contract;

“the Executive” means the Health and Safety Executive for Northern Ireland;

“mobile worker” means any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road or air;

“night time”, in relation to a worker, means a period—

(a) the duration of which is not less than seven hours, and

(b) which includes the period between midnight and 5 a.m.,

which is determined for the purposes of these Regulations by a relevant agreement, or, in default of such a determination, the period between 11 p.m. and 6 a.m.;

“night work” means work during night time;

“night worker” means a worker—

(a) who, as a normal course, works at least three hours of the worker’s daily working time during night time, or

(b) who is likely, during night time, to work at least such proportion of the worker’s annual working time as may be specified for the purposes of these Regulations in a collective agreement or a workforce agreement;

and, for the purpose of paragraph (a) of this definition, a person works hours as a normal course (without prejudice to the generality of that expression) if that person works such hours on the majority of days on which the person works;

“offshore work” means work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or a vessel, including any such work performed in the territorial waters of the United Kingdom adjacent to Northern Ireland or in an area or part of an area designated under section 1(7) of the Continental Shelf Act 1964<sup>(9)</sup> in which the law of Northern Ireland applies<sup>(10)</sup>;

“registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983<sup>(11)</sup>;

<sup>(8)</sup> S.I. 1992/807 (N.I. 5); the definition of “collective agreement” was amended by Article 150(2) of, and Schedule 2 to, the Trade Union and Labour Relations (Northern Ireland) Order 1995 (S.I. 1995/1980 (N.I. 12))

<sup>(9)</sup> 1964 c. 29

<sup>(10)</sup> See the Civil Jurisdiction (Offshore Activities) Order 1987 (S.I. 1987/2197)

<sup>(11)</sup> 1983 c. 54

“relevant agreement”, in relation to a worker, means a workforce agreement which applies to the worker, any provision of a collective agreement which forms part of a contract between the worker and the worker’s employer, or any other agreement in writing which is legally enforceable as between the worker and the employer;

“relevant training” means work experience provided pursuant to a training course or programme, training for employment, or both, other than work experience or training—

- (a) the immediate provider of which is an educational institution or a person whose main business is the provision of training, and
- (b) which is provided on a course run by that institution or person;

“rest period”, in relation to a worker, means a period which is not working time, other than a rest break or leave to which the worker is entitled under these Regulations;

“the restricted period”, in relation to a worker, means the period between 10 p.m. and 6 a.m. or, where the worker’s contract provides for the worker to work after 10 p.m., the period between 11 p.m. and 7 a.m.;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“worker” means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

- (a) a contract of employment; or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker’s contract shall be construed accordingly;

“worker employed in agriculture” has the same meaning as in the Agricultural Wages (Regulation) (Northern Ireland) Order 1977(12) and a reference to a worker partly employed in agriculture is to a worker employed in agriculture whose employer also employs that worker for non-agricultural purposes;

“workforce agreement” means an agreement between an employer and workers employed by that employer or their representatives in respect of which the conditions set out in Schedule 1 are satisfied;

“working time”, in relation to a worker, means—

- (a) any period during which the worker is working, at the employer’s disposal and carrying out the worker’s activities or duties,
- (b) any period during which the worker is receiving relevant training, and
- (c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement;

and “work” shall be construed accordingly; and

“young worker” means a worker who has not attained the age of 18 and who is over compulsory school age within the meaning of Article 46 of the Education and Libraries (Northern Ireland) Order 1986(13).

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(12) S.I. 1977/2151 (N.I. 22)

(13) S.I. 1986/594 (N.I. 3); Article 46 was substituted by Article 156 of the Education Reform (Northern Ireland) Order 1989 (S.I. 1989/2406 (N.I. 20))

(3) In the absence of a definition in these Regulations, words and expressions used in particular provisions which are also used in corresponding provisions of the [Directive 2003/88/EC](#) of the European Parliament and of the Council of 4th November 2003 concerning certain aspects of the organisation of working time<sup>(14)</sup> or the [Directive 94/33/EC](#) of the European Parliament and of the Council of 22nd June 1994 on the protection of young people at work<sup>(15)</sup> have the same meaning as they have in those corresponding provisions.

## PART 2

### Rights and Obligations Concerning Working Time

#### General

3.—(1) The provisions of this Part have effect subject to the exceptions provided for in Part 3.

(2) Where, in this Part, separate provision is made as respects the same matter in relation to workers generally and to young workers, the provision relating to workers generally applies only to adult workers and those young workers to whom, by virtue of any exception in Part 3, the provision relating to young workers does not apply.

#### Maximum weekly working time

4.—(1) Unless an employer has first obtained the worker's agreement in writing to perform such work, a worker's working time, including overtime, in any reference period which is applicable in the case of that worker, shall not exceed an average of 48 hours for each seven days.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each worker employed, by the employer, in relation to whom it applies and shall keep up-to-date records of all workers who carry out work to which it does not apply by reason of the fact that the employer has obtained the worker's agreement as mentioned in paragraph (1).

(3) Subject to paragraphs (4) and (5) and any agreement under regulation 27(b), the reference periods which apply in the case of a worker are—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or
- (b) in any other case, any period of 17 weeks in the course of the worker's employment.

(4) Where a worker has worked for an employer for less than 17 weeks, the reference period applicable in the case of that worker is the period that has elapsed since starting work for the employer.

(5) Paragraphs (3) and (4) shall apply to a worker who is excluded from the scope of certain provisions of these Regulations by regulation 25 as if for each reference to 17 weeks there were substituted a reference to 26 weeks.

(6) For the purposes of this regulation, a worker's average working time for each seven days during a reference period shall be determined according to the formula—

$$\frac{A + B}{C}$$

where—

<sup>(14)</sup> O.J. No. L299, 18.11.03, p. 9

<sup>(15)</sup> O.J. No. L216, 20.8.94, p. 12

A is the aggregate number of hours comprised in the worker's working time during the course of the reference period;

B is the aggregate number of hours comprised in the worker's working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period on which the worker has worked equals the number of excluded days during the reference period; and

C is the number of weeks in the reference period.

- (7) In paragraph (6), "excluded days" means days comprised in—
- (a) any period of annual leave taken by the worker in exercise of an entitlement under regulation 15;
  - (b) any period of sick leave taken by the worker;
  - (c) any period of maternity, paternity, adoption or parental leave taken by the worker; and
  - (d) any period in respect of which the limit specified in paragraph (1) did not apply in relation to the worker by reason of the fact that the employer has obtained the worker's agreement as mentioned in paragraph (1).

#### **Agreement to exclude the maximum**

- 5.—(1) An agreement for the purposes of regulation 4(1)—
- (a) may either relate to a specified period or apply indefinitely; and
  - (b) subject to any provision in the agreement for a different period of notice, shall be terminable by the worker giving not less than seven days' notice to the employer in writing.
- (2) Where an agreement for the purposes of regulation 4(1) makes provision for the termination of the agreement after a period of notice, the notice period provided for shall not exceed three months.

#### **Maximum working time for young workers**

- 6.—(1) A young worker's working time shall not exceed—
- (a) eight hours a day, or
  - (b) 40 hours a week.
- (2) If, on any day, or, as the case may be, during any week, a young worker is employed by more than one employer, the young worker's working time shall be determined for the purpose of paragraph (1) by aggregating the number of hours worked for each employer.
- (3) For the purposes of paragraphs (1) and (2), a week starts at midnight between Sunday and Monday.
- (4) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limits specified in paragraph (1) are complied with in the case of each worker employed by the employer in relation to whom they apply.

#### **Length of night work**

- 7.—(1) A night worker's normal hours of work in any reference period which is applicable, in the case of that worker, shall not exceed an average of eight hours for each 24 hours.
- (2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each night worker employed by the employer.
- (3) The reference periods which apply in the case of a night worker are—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or
  - (b) in any other case, any period of 17 weeks in the course of the night worker's employment.
- (4) Where a worker has worked for an employer for less than 17 weeks, the reference period applicable, in the case of that worker, is the period that has elapsed since the worker started work for the employer.
- (5) For the purposes of this regulation, a night worker's average normal hours of work for each 24 hours during a reference period shall be determined according to the formula—

$$\frac{A}{B - C}$$

where—

A is the number of hours during the reference period which are normal working hours for that worker;

B is the number of days during the reference period; and

C is the total number of hours during the reference period comprised in rest periods spent by the worker in pursuance of the worker's entitlement under regulation 13, divided by 24.

(6) An employer shall ensure that no night worker employed, by that employer, whose work involves special hazards or heavy physical or mental strain works for more than eight hours in any 24-hour period during which the night worker performs night work.

(7) For the purposes of paragraph (6), the work of a night worker shall be regarded as involving special hazards or heavy physical or mental strain if—

- (a) it is identified as such in—
  - (i) a collective agreement, or
  - (ii) a workforce agreement,
 which takes account of the specified effects and hazards of night work, or
- (b) it is recognised in a risk assessment made by the employer under regulation 3 of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000(16) as involving a significant risk to the health and safety of workers.

### **Night work by young workers**

8. An employer shall ensure that no young worker employed, by that employer, works during the restricted period.

### **Health assessment and transfer of night workers to day work**

9.—(1) An employer—

- (a) shall not assign an adult worker to work which is to be undertaken during periods such that the worker will become a night worker unless—
  - (i) the employer has ensured that the worker will have the opportunity of a free health assessment before the worker takes up the assignment; or
  - (ii) the worker had a health assessment before being assigned to work to be undertaken during such periods on an earlier occasion, and the employer has no reason to believe that that assessment is no longer valid; and

- (b) shall ensure that each night worker has the opportunity of a free health assessment at regular intervals of whatever duration may be appropriate in each case.
  - (2) Subject to paragraph (4), an employer—
    - (a) shall not assign a young worker to work during the restricted period unless—
      - (i) the employer has ensured that the young worker will have the opportunity of a free assessment of health and capacities before taking up the assignment; or
      - (ii) the young worker had an assessment of health and capacities before being assigned to work during the restricted period on an earlier occasion, and the employer has no reason to believe that that assessment is no longer valid; and
    - (b) shall ensure that each young worker employed and assigned to work during the restricted period has the opportunity of a free assessment of health and capacities at regular intervals of whatever duration may be appropriate in each case.
  - (3) For the purposes of paragraphs (1) and (2), an assessment is free if it is at no cost to the worker to whom it relates.
  - (4) The requirements in paragraph (2) do not apply in a case where the work a young worker is assigned to do is of an exceptional nature.
  - (5) A person shall not disclose an assessment made for the purposes of this regulation to any person other than the worker to whom it relates, unless—
    - (a) the worker has given consent in writing to the disclosure, or
    - (b) the disclosure is confined to a statement that the assessment shows the worker to be fit—
      - (i) in a case where paragraph (1)(a)(i) or (2)(a)(i) applies, to take up an assignment, or
      - (ii) in a case where paragraph (1)(b) or (2)(b) applies, to continue to undertake an assignment.
  - (6) Where—
    - (a) a registered medical practitioner has advised an employer that a worker employed by the employer is suffering from health problems which the practitioner considers to be connected with the fact that the worker performs night work, and
    - (b) it is possible for the employer to transfer the worker to work—
      - (i) to which the worker is suited, and
      - (ii) which is to be undertaken during periods such that the worker will cease to be a night worker,
- the employer shall transfer the worker accordingly.

### **Pattern of work**

**10.** Where the pattern according to which an employer organises work is such as to put the health and safety of a worker employed by the employer at risk, in particular because the work is monotonous or the work-rate is predetermined, the employer shall ensure that the worker is given adequate rest breaks.

### **Records**

- 11.** An employer shall—
- (a) keep records which are adequate to show whether the limits specified in regulations 4(1), 6(1) and 7(1) and (6) and the requirements in regulations 8 and 9(1) and (2) are being complied with in the case of each worker employed in relation to whom they apply; and

- (b) retain such records for two years from the date on which they were made.

### **Daily rest period**

**12.**—(1) A worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which the worker works for an employer.

(2) Subject to paragraph (3), a young worker is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period during which the young worker works for an employer.

(3) The minimum rest period provided for in paragraph (2) may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration.

### **Weekly rest period**

**13.**—(1) Subject to paragraph (2), a worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven-day period during which the worker works for an employer.

(2) If the employer so determines, a worker shall be entitled to either—

- (a) two uninterrupted rest periods each of not less than 24 hours in each 14-day period during which the worker works for the employer; or
- (b) one uninterrupted rest period of not less than 48 hours in each such 14-day period,

in place of the entitlement provided for in paragraph (1).

(3) Subject to paragraph (8), a young worker is entitled to a rest period of not less than 48 hours in each seven-day period during which the young worker works for the employer.

(4) For the purpose of paragraphs (1) to (3), a seven-day period or (as the case may be) 14-day period shall be taken to begin—

- (a) at such times on such days as may be provided for the purposes of this regulation in a relevant agreement; or
- (b) where there are no provisions of a relevant agreement which apply, at the start of each week or (as the case may be) every other week.

(5) In a case where, in accordance with paragraph (4), 14-day periods are to be taken to begin at the start of every other week, the first such period applicable in the case of a particular worker shall be taken to begin at the start of the week in which that employment begins.

(6) For the purposes of paragraphs (4) and (5), a week starts at midnight between Sunday and Monday.

(7) The minimum rest period to which a worker is entitled under paragraph (1) or (2) shall not include any part of a rest period to which the worker is entitled under regulation 12(1), except where this is justified by objective or technical reasons or reasons concerning the organisation of work.

(8) The minimum rest period to which a young worker is entitled under paragraph (3)—

- (a) may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration; and
- (b) may be reduced where this is justified by technical or organisation reasons, but not to less than 36 consecutive hours.

### **Rest breaks**

**14.**—(1) Where a worker's daily working time is more than six hours, the worker is entitled to a rest break.



(2) The details of the rest break to which a worker is entitled under paragraph (1), including its duration and the terms on which it is granted, shall be in accordance with any provisions for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.

(3) Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes, and the worker is entitled to spend it away from a workstation if the worker has one.

(4) Where a young worker's daily working time is more than four and a half hours, the young worker is entitled to a rest break of at least 30 minutes, which shall be consecutive if possible, and the young worker is entitled to spend it away from a workstation if the young worker has one.

(5) If, on any day, a young worker is employed by more than one employer, the young worker's daily working time shall be determined for the purpose of paragraph (4) by aggregating the number of hours worked for each employer.

### **Entitlement to annual leave**

**15.**—(1) Subject to paragraph (4), a worker is entitled to four weeks' annual leave in each leave year.

(2) A worker's leave year, for the purposes of this regulation, begins—

- (a) on such date during the calendar year as may be provided for in a relevant agreement; or
- (b) where there are no provisions of a relevant agreement which apply, on the date on which the worker's employment begins and each subsequent anniversary of that date.

(3) Paragraph (2) does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

(4) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) the worker's first leave year begins, the leave to which the worker is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which the worker's employment begins.

(5) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

- (a) it may only be taken in the leave year in respect of which it is due, and
- (b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

### **Entitlement to additional annual leave**

**16.**—(1) Subject to regulation 33 and paragraphs (2) and (4), a worker is entitled to a period of 1.6 weeks additional leave in each leave year.

(2) The aggregate entitlement provided for in paragraph (1) and regulation 15(1) is subject to a maximum of 28 days.

(3) A worker's leave year begins for the purposes of this regulation on the same date as the worker's leave year begins for the purposes of regulation 15.

(4) Where the date on which a worker's employment begins is later than the date on which the worker's first leave year begins, the additional leave to which the worker is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which the worker's employment begins.

(5) Leave to which a worker is entitled under this regulation may be taken in instalments, but it may not be replaced by a payment in lieu except where the worker's employment is terminated.

(6) A relevant agreement may provide for any leave to which a worker is entitled under this regulation to be carried forward into the leave year immediately following the leave year in respect of which it is due.

### **Compensation related to entitlement to leave**

17.—(1) This regulation applies where—

- (a) a worker’s employment is terminated during the course of the worker’s leave year, and
- (b) on the date on which the termination takes effect (“the termination date”), the proportion of leave taken to which the worker is entitled in the leave year under regulation 15 and regulation 16 differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, the employer shall make a payment to the worker in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

- (a) such sum as may be provided for the purposes of this regulation in a relevant agreement, or
- (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 20 in respect of a period of leave determined according to the formula—

$$(A \times B) - C$$

where—

A is the period of leave to which the worker is entitled under regulation 15 and regulation 16;

B is the proportion of the worker’s leave year which expired before the termination date; and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, the worker shall compensate the employer, whether by a payment, by undertaking additional work or otherwise.

### **Dates on which leave is taken**

18.—(1) A worker may take leave to which the worker is entitled under regulation 15 and regulation 16 on such days as the worker may elect by giving notice to the employer in accordance with paragraph (3), subject to any requirement imposed by the employer under paragraph (2).

(2) A worker’s employer may require the worker—

- (a) to take leave to which the worker is entitled under regulation 15 or regulation 16; or
- (b) not to take such leave,

on particular days, by giving notice to the worker in accordance with paragraph (3).

(3) A notice under paragraph (1) or (2)—

- (a) may relate to all or part of the leave to which a worker is entitled in a leave year;
- (b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and
- (c) shall be given to the employer or, as the case may be, the worker before the relevant date.

(4) The relevant date, for the purposes of paragraph (3), is the date—

- (a) in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates, and
  - (b) in the case of a notice under paragraph (2)(b), as many days in advance of the earliest day so specified as the number of days or part-days to which the notice relates.
- (5) Any right or obligation under paragraphs (1) to (4) may be varied or excluded by a relevant agreement.
- (6) This regulation does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture) except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

### **Leave during the first year of employment**

**19.**—(1) During the first year of a worker’s employment, the amount of leave the worker may take at any time in exercise of the worker’s entitlement under regulation 15 or regulation 16 is limited to the amount which is deemed to have accrued at that time under paragraph (2), as modified under paragraph (3) in a case where that paragraph applies, less the amount of leave (if any) that the worker has already taken during that year.

(2) For the purposes of paragraph (1), leave is deemed to accrue over the course of the worker’s first year of employment, at the rate of one-twelfth of the amount specified in regulation 15(1) and regulation 16(1), subject to the limit contained in regulation 16(2), on the first day of each month of that year.

(3) Where the amount of leave that has accrued in a particular case includes a fraction of a day other than a half-day, the fraction shall be treated as a half-day if it is less than a half-day and as a whole day if it is more than a half-day.

### **Payment in respect of periods of leave**

**20.**—(1) A worker is entitled to be paid in respect of any period of annual leave to which the worker is entitled under regulation 15 and regulation 16, at the rate of a week’s pay in respect of each week of leave.

(2) Articles 17 to 20 of the 1996 Order shall apply for the purpose of determining the amount of a week’s pay for the purposes of this regulation, subject to the modifications set out in paragraph (3).

(3) The provisions referred to in paragraph (2) shall apply—

- (a) as if references to the employee were references to the worker;
- (b) as if references to the employee’s contract of employment were references to the worker’s contract;
- (c) as if the calculation date were the first day of the period of leave in question; and
- (d) as if the references to Articles 23 and 24 did not apply.

(4) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under the worker’s contract (“contractual remuneration”) (and paragraph (1) does not confer a right under that contract).

(5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

**Entitlements under other provisions**

**21.** Where during any period a worker is entitled to a rest period, rest break or annual leave both under a provision of these Regulations and under a separate provision (including a provision of the worker's contract), the worker may not exercise the two rights separately, but may, in taking a rest period, break or leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

**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>(17)</sup> apply;
  - (b) to workers to whom the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004<sup>(18)</sup> apply;
  - (c) to workers to whom the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003<sup>(19)</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>(20)</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>(21)</sup> applies.
- (4) Regulation 28 does not apply to workers to whom the Cross-border Railways Services (Working Time) Regulations (Northern Ireland) 2008<sup>(22)</sup> apply.

**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

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(17) S.I. 2002/2125

(18) S.I. 2004/1713

(19) S.I. 2003/3049

(20) O.J. No. L302, 1.12.00, p. 57

(21) O.J. No. L80, 23.3.02, p. 35

(22) S.R. 2008 No. 315

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—

- (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.

## PART 4

### Miscellaneous

#### Enforcement

**36.**—(1) In this regulation, regulations 37 to 42, 48 and Schedule 3—

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978<sup>(23)</sup>;

“the Civil Aviation Authority” means the authority referred to in section 2(1) of the Civil Aviation Act 1982<sup>(24)</sup>;

“code of practice” includes a standard, a specification and any other documentary form of practical guidance;

“enforcement authority” means the Executive, a district council, the Civil Aviation Authority or the Department of the Environment;

“government department” includes a department of the Government of the United Kingdom;

“improvement notice” means a notice under paragraph 3 of Schedule 3;

“inspector” means an inspector appointed under paragraph 1 of Schedule 3;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof); and
- (c) any tent or movable structure;

“prohibition notice” means a notice under paragraph 4 of Schedule 3;

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<sup>(23)</sup> S.I. 1978/1039 (N.I. 9)

<sup>(24)</sup> 1982 c. 16

“relevant civil aviation worker” means a mobile worker who works mainly on board civil aircraft, excluding any worker to whom regulation 22(2)(b) applies;

“the relevant requirements” means the following provisions—

- (a) regulations 4(2), 6(4), 7(2) and (6), 8, 9(1), (2) and (6), 10, 11 and 35(4)(a);
- (b) regulation 28, insofar as it applies where regulation 7(1), (2) or (6) is modified or excluded, and
- (c) regulation 29(2), insofar as it applies where regulation 7(1), (2) or (6) is excluded;

“relevant road transport worker” means a mobile worker to whom one or more of the following applies—

- (a) Regulation (EC) No. 561/2006<sup>(25)</sup>;
- (b) the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) of 1st July 1970; and
- (c) the domestic drivers’ hours code referred to in Article 56(6) of the Road Traffic (Northern Ireland) Order 1981<sup>(26)</sup>;

“the relevant statutory provisions” means—

- (a) the provisions of the 1978 Order and of any regulations made under powers contained in that Order; and
- (b) while and to the extent that they remain in force, the statutory provisions mentioned in Schedule 1 to the 1978 Order.

(2) It shall be the duty of the Executive to make adequate arrangements for the enforcement of the relevant requirements except to the extent that—

- (a) a district council is made responsible for their enforcement by paragraph (3);
- (b) the Civil Aviation Authority is made responsible for their enforcement by paragraph (5); or
- (c) the Department of the Environment is made responsible for their enforcement by paragraph (6).

(3) Where the relevant requirements apply in relation to workers employed in premises in respect of which a district council is responsible, under the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999<sup>(27)</sup>, for enforcing any of the relevant statutory provisions, it shall be the duty of that council to enforce those requirements.

(4) The duty imposed on district councils by paragraph (3) shall be performed in accordance with such guidance as may be given to them by the Executive.

(5) It shall be the duty of the Civil Aviation Authority to enforce the relevant requirements in relation to relevant civil aviation workers.

(6) It shall be the duty of the Department of the Environment to enforce the relevant requirements in relation to relevant road transport workers.

(7) The provisions of Schedule 3 shall apply in relation to the enforcement of the relevant requirements.

(8) Any function of the Department of Enterprise, Trade and Investment under the 1978 Order which is exercisable in relation to the enforcement by the Executive of the relevant statutory provisions shall be exercisable in relation to the enforcement by the Executive of the relevant requirements.

<sup>(25)</sup> O.J. No. L102, 11.04.06, p. 1

<sup>(26)</sup> S.I. 1981/154 (N.I. 1)

<sup>(27)</sup> S.R. 1999 No. 90

## Offences

37.—(1) An employer who fails to comply with any of the relevant requirements shall be guilty of an offence.

(2) The provisions of paragraph (3) shall apply where an inspector is exercising or has exercised any power conferred by Schedule 3.

(3) It is an offence for a person—

- (a) to contravene any requirement imposed by the inspector under paragraph 2 of Schedule 3;
- (b) to prevent or attempt to prevent any other person from appearing before the inspector or from answering any question to which the inspector may by virtue of paragraph 2(2)(e) of Schedule 3 require an answer;
- (c) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as is modified on appeal);
- (d) intentionally to obstruct the inspector in the exercise or performance of the inspector's powers or duties;
- (e) to use or disclose any information in contravention of paragraph 8 of Schedule 3;
- (f) to knowingly make a false statement or recklessly to make a statement which is false, where the statement is made in purported compliance with a requirement to furnish any information imposed by or under these Regulations.

(4) An employer guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(5) A person guilty of an offence under paragraph (3) shall be liable to the penalty prescribed in relation to that provision by paragraph (6), (7) or (8) as the case may be.

(6) A person guilty of an offence under paragraph (3)(a), (b) or (d), shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person guilty of an offence under paragraph (3)(c) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(8) A person guilty of an offence under any of the sub-paragraphs of paragraph (3) not falling within paragraph (6) or (7), shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment—
  - (i) if the offence is under paragraph (3)(e), to imprisonment for a term not exceeding two years, or a fine, or both;
  - (ii) if the offence is not one to which the preceding head applies, to a fine.

(9) The provisions set out in regulations 38 to 42 shall apply in relation to the offences provided for in paragraphs (1) and (3).

## Offences due to fault of other person

38. Where the commission by any person of an offence is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and

convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

### **Offences by bodies corporate etc.**

**39.**—(1) For the purposes of these Regulations, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the functions of management as if that member were a director of the body corporate.

(2) If an offence under these Regulations is committed by a partnership or proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the partner’s part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In paragraph (2) “partner” includes a person purporting to act as a partner.

### **Restriction on institution of proceedings**

**40.** Proceedings for an offence shall not be instituted except by an inspector or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

### **Prosecutions by inspectors**

**41.** An inspector, if authorised in that behalf by an enforcement authority, may, although not of counsel or a solicitor, prosecute before a court of summary jurisdiction proceedings for an offence under these Regulations.

### **Power of court to order cause of offence to be remedied**

**42.**—(1) Where a person is convicted of an offence in respect of any matters which appear to the court to be matters which it is in that person’s power to remedy, the court may, in addition to or instead of imposing any punishment, order that person, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under these Regulations in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).

### **Remedies**

**43.**—(1) A worker may present a complaint to an industrial tribunal that the worker’s employer—

- (a) has refused to permit the worker to exercise any right the worker has under—
  - (i) regulation 12(1) or (2), 13(1), (2) or (3), 14(1) or (4), 15 or 16;
  - (ii) regulation 28, in so far as it applies where regulation 12(1), 13(1) or (2) or 14(1) is modified or excluded;
  - (iii) regulation 29, in so far as it applies where regulation 12(1), 13(1) or (2) or 14(1) is excluded; or

- (iv) regulation 30(3), 34(2) or 35(4)(b); or
  - (b) has failed to pay the whole or any part of any amount due to the worker under regulation 17(2) or 20(1).
- (2) Subject to regulation 44, an industrial tribunal shall not consider a complaint under this regulation unless it is presented—
- (a) before the end of the period of three months (or, in a case to which regulation 49(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made; 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 or, as the case may be, six 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 worker.
- (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 refusing to permit the worker to exercise the right, and
  - (b) any loss sustained by the worker 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 a worker in accordance with regulation 17(2) or 20(1), it shall order the employer to pay to the worker the amount which it finds to be due.

#### **Extension of time limits because of mediation in certain cross-border disputes**

**44.**—(1) In this regulation—

“Mediation Directive” means [Directive 2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters<sup>(28)</sup>;

“mediation” has the meaning given by article 3(a) of the Mediation Directive;

“mediator” has the meaning given by article 3(b) of the Mediation Directive; and

“relevant dispute” means a dispute to which Article 8(1) of the Mediation Directive applies (certain cross-border disputes).

(2) Paragraph (3) applies where—

(a) a three month time limit is set by regulation 43(2) in relation to the whole or part of a relevant dispute;

(b) a mediation in relation to the relevant dispute starts before the period expires; and

(c) if not extended by this regulation, the time limit would expire before the mediation ends or less than four weeks after it ends.

(3) The time limit expires instead at the end of four weeks after the mediation ends (subject to paragraph (4)).

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(28) O.J. L 136, 24.5.2008, p. 3

(4) If a time limit mentioned in paragraph (2)(a) has been extended by this regulation, paragraphs (2) and (3) apply to the extended time limit as they apply to a time limit mentioned in paragraph (2) (a).

(5) Where more than one time limit applies in relation to a relevant dispute, the extension by paragraph (3) of one of those time limits does not affect the others.

(6) For the purposes of this regulation, a mediation starts on the date of the agreement to mediate that is entered into by the parties and the mediator.

(7) For the purposes of this regulation, a mediation ends on the date of the first of these to occur—

- (a) the parties reach an agreement in resolution of the relevant dispute;
- (b) a party completes the notification of the other parties that it has withdrawn from the mediation;
- (c) a party to whom a qualifying request is made fails to give a response reaching the other parties within 14 days of the request;
- (d) the parties, after being notified that the mediator's appointment has ended (by death, resignation or otherwise), fail to agree within 14 days to seek to appoint a replacement mediator; or
- (e) the mediation otherwise comes to an end pursuant to the terms of the agreement to mediate.

(8) For the purpose of paragraph (7), a qualifying request is a request by a party that another (A) confirm to all parties that A is continuing with the mediation.

(9) In the case of any relevant dispute, references in this regulation to a mediation are references to the mediation so far as it relates to that dispute, and references to a party are to be read accordingly.

(10) Where the tribunal has the power under regulation 43(2)(b) to extend a period of limitation, the power is exercisable in relation to the period of limitation as extended by this regulation.

### **Restrictions on contracting out**

**45.—**(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or
- (b) to preclude a person from bringing proceedings under these Regulations before an industrial tribunal.

(2) Paragraph (1) does not apply to—

- (a) any agreement to refrain from instituting or continuing proceedings where the Labour Relations Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996(29) (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within Article 20(1) (f) of the Industrial Tribunals (Northern Ireland) Order 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating compromise agreements under these Regulations are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,

- (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on the worker's ability to pursue rights before an industrial tribunal,
  - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,
  - (e) the agreement must identify the adviser, and
  - (f) the agreement must state that the conditions regulating compromise agreements under these Regulations are satisfied.
- (4) A person is a relevant independent adviser for the purposes of paragraph (3)(c) if that person—
- (a) is a qualified lawyer,
  - (b) is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
  - (c) works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the worker—
- (a) if the person is, is employed by or is acting in the matter for the employer or an associated employer,
  - (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer, or
  - (c) in the case of a person within paragraph (4)(c), if the worker makes a payment for the advice received from that person.
- (6) In paragraph (4)(a), “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (7) In paragraph (4)(b), “independent trade union” has the same meaning as in the 1996 Order.
- (8) For the purposes of paragraph (5) any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control; or
  - (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

## **Guidance**

**46.**—(1) The Department for Employment and Learning shall, after consulting persons appearing to it to represent the two sides of industry, arrange for the publication, in such form and manner as it considers appropriate, of information and advice concerning the operation of these Regulations.

(2) The information and advice shall be such as appear to that Department best calculated to enable employers and workers affected by these Regulations to understand their respective rights and obligations under them.

## PART 5

### Special Classes of Person

#### Agency workers not otherwise “workers”

47.—(1) This regulation applies in any case where an individual (“the agency worker”)—

- (a) is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangements made between the agent and the principal; but
- (b) is not, as respects that work, a worker, because of the absence of a worker’s contract between the individual and the agent or the principal; and
- (c) is not a party to a contract under which the individual undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.

(2) In a case where this regulation applies, the other provisions of these Regulations shall have effect as if there were a worker’s contract for the doing of the work by the agency worker made between the agency worker and—

- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work; or
- (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work,

and as if that person were the agency worker’s employer.

#### Crown employment

48.—(1) Subject to paragraph (4) and regulation 49, these Regulations have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other workers.

(2) In paragraph (1) “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision.

(3) For the purposes of the application of the provisions of these Regulations in relation to Crown employment in accordance with paragraph (1)—

- (a) references to a worker shall be construed as references to a person in Crown employment; and
- (b) references to a worker’s contract shall be construed as references to the terms of employment of a person in Crown employment.

(4) No act or omission by the Crown which is an offence under regulation 37 shall make the Crown criminally liable, but the High Court may, on the application of a person appearing to the Court to have an interest, declare any such act or omission unlawful.

#### Armed forces

49.—(1) Regulation 48 applies—

- (a) subject to paragraph (2), to service as a member of the armed forces, and
- (b) to employment by an association established for the purposes of Part 11 of the Reserve Forces Act 1996(30).



(2) No complaint concerning the service of any person as a member of the armed forces may be presented to an industrial tribunal under regulation 43 unless—

- (a) that person has made a complaint in respect of the same matter to an officer under the service redress procedures, and
- (b) that complaint has not been withdrawn.

(3) For the purpose of paragraph (2)(b), a person shall be treated as having withdrawn that complaint if, having made a complaint to an officer under the service redress procedures—

- (a) where the service redress procedures are those referred to in sections 340A to 340G of the Armed Forces Act 2006<sup>(31)</sup>, neither that officer nor a superior officer has decided to refer the complaint to the Defence Council, and the person who made the complaint fails to apply for such a reference to be made;
- (b) in any other case, the person who made the complaint fails to submit the complaint to the Defence Council under the service redress procedures.

(4) Where a complaint of the kind referred to in paragraph (2) is presented to an industrial tribunal, the service redress procedures may continue after the complaint is presented.

(5) In this regulation, “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in sections 340A to 340G of the Armed Forces Act 2006.

### **Police service**

**50.**—(1) Subject to paragraph (2), for the purposes of these Regulations, the holding, otherwise than under a contract of employment, of the office of constable shall be treated as employment, under a worker’s contract, by the relevant officer.

(2) For the purposes of these Regulations, any constable who has been seconded to the National Crime Agency to serve as a member of its staff shall be treated as employed by the National Crime Agency.

(3) Any matter relating to the employment of a worker which may be provided for the purposes of these Regulations in a workforce agreement may be provided for the same purposes in relation to the service of a person holding the office of constable by an agreement between the relevant officer and the central committee.

(4) In this regulation—

“the central committee” means the committee constituted in accordance with regulation 14 of the Police Association for Northern Ireland Regulations 1991<sup>(32)</sup>; and

“the relevant officer” means—

- (a) in relation to a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the chief constable; and
- (b) in relation to any other person holding the office of constable, the person who has the direction and control of the body of constables in question.

### **Non-employed trainees**

**51.** For the purposes of these Regulations, a person receiving relevant training, otherwise than under a contract of employment, shall be regarded as a worker, and the person whose undertaking is providing the training shall be regarded as the employer.

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<sup>(31)</sup> 2006 c. 52; the Armed Forces Act 2006 was amended by section 2 of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 (2015 c.19)

<sup>(32)</sup> S.R. 1991 No. 168

**Agricultural workers**

52. The provisions of Schedule 2 have effect in relation to workers employed in agriculture.

**PART 6****Consequential Amendments and Revocations****Consequential amendments**

53.—(1) In Schedule 4A to the Industrial Relations (Northern Ireland) Order 1992<sup>(33)</sup>, for the entry “Regulation 30 of the Working Time Regulations (Northern Ireland) 1998 (SR 1998/386) (breach of regulations)” substitute “Regulation 43 of the Working Time Regulations (Northern Ireland) 2016 (S.R. 2016 No. 49) (breach of regulations)”.

(2) In Article 20(1)(f) (cases where conciliation provisions apply) of the Industrial Tribunals (Northern Ireland) Order 1996, for “regulation 30 of the Working Time Regulations (Northern Ireland) 1998” substitute “regulation 43 of the Working Time Regulations (Northern Ireland) 2016”.

(3) The 1996 Order is amended as follows—

(a) in Article 68A (working time cases)—

(i) in paragraph (1)(a), for “the Working Time Regulations (Northern Ireland) 1998” substitute “the Working Time Regulations (Northern Ireland) 2016”;

(ii) in paragraph (5), for “the Working Time Regulations (Northern Ireland) 1998” substitute “the Working Time Regulations (Northern Ireland) 2016”.

(b) in Article 132A (working time cases)—

(i) in paragraph (1)(a), for “the Working Time Regulations (Northern Ireland) 1998” substitute “the Working Time Regulations (Northern Ireland) 2016”;

(ii) in paragraph (2), for “the Working Time Regulations (Northern Ireland) 1998” substitute “the Working Time Regulations (Northern Ireland) 2016”.

(c) in Article 135(4)(d) (assertion of statutory right), for “the Working Time Regulations (Northern Ireland) 1998” substitute “the Working Time Regulations (Northern Ireland) 2016”.

(4) In Schedule 4 to the Employment (Northern Ireland) Order 2003<sup>(34)</sup>, for the entry “Regulation 30 of the Working Time Regulations (Northern Ireland) 1998 (SR 1998/386) (breach of regulations)” substitute “Regulation 43 of the Working Time Regulations (Northern Ireland) 2016 (breach of regulations)”.

(5) In regulation 4(6)(a) of the Road Transport (Working Time) Regulations (Northern Ireland) 2005<sup>(35)</sup>, for “regulation 13 of the Working Time Regulations (Northern Ireland) 1998” substitute “regulation 15 of the Working Time Regulations (Northern Ireland) 2016”.

(6) In regulation 21(1)(f) of the Police Service of Northern Ireland Regulations 2005<sup>(36)</sup>, for “regulation 2(2) of the Working Time Regulation (Northern Ireland) 1998” substitute “regulation 2(2) of the Working Time Regulations (Northern Ireland) 2016”.

<sup>(33)</sup> S.I. 1992/807 (N.I. 5); Schedule 4A was inserted by section 4 of, and Schedule 2 to, the Employment Act (Northern Ireland) 2011 (c. 13)

<sup>(34)</sup> S.I. 2003/2902 (N.I. 15)

<sup>(35)</sup> S.R. 2005 No. 241

<sup>(36)</sup> S.R. 2005 No. 547

(7) In the definitions of “rest period”, “working time” and “working time agreement” in regulation 6(5) of the Agency Workers Regulations (Northern Ireland) 2011<sup>(37)</sup>, for “Working Time Regulations (Northern Ireland) 1998” substitute “Working Time Regulations (Northern Ireland) 2016”.

(8) In the Schedule to the Labour Relations Agency Arbitration Scheme (Jurisdiction) Order (Northern Ireland) 2012<sup>(38)</sup>, for the entry “regulation 30 of the Working Time Regulations (Northern Ireland) 1998” substitute “regulation 43 of the Working Time Regulations (Northern Ireland) 2016”.

### **Revocations and savings**

**54.**—(1) Subject to paragraphs (2) and (3), the following regulations are revoked—

- (a) Working Time Regulations (Northern Ireland) 1998<sup>(39)</sup>;
- (b) Working Time (Amendment) Regulations (Northern Ireland) 1998<sup>(40)</sup>;
- (c) Working Time (Amendment) Regulations (Northern Ireland) 1999<sup>(41)</sup>;
- (d) Working Time (Amendment) Regulations (Northern Ireland) 2000<sup>(42)</sup>;
- (e) Working Time (Amendment) Regulations (Northern Ireland) 2002<sup>(43)</sup>;
- (f) Working Time (Amendment) Regulations (Northern Ireland) 2003<sup>(44)</sup>;
- (g) Working Time (Amendment No. 2) Regulations (Northern Ireland) 2003<sup>(45)</sup>;
- (h) The Working Time (Amendment) Regulations (Northern Ireland) 2006<sup>(46)</sup>;
- (i) The Working Time (Amendment No. 2) Regulations (Northern Ireland) 2006<sup>(47)</sup>;
- (j) The Working Time (Amendment) Regulations (Northern Ireland) 2007<sup>(48)</sup>; and
- (k) The Working Time (Amendment) Regulations (Northern Ireland) 2009<sup>(49)</sup>.

(2) The revocations in paragraph (1) do not affect the amendments made by those Regulations to the Industrial Tribunals (Northern Ireland) Order 1996 and to the 1996 Order.

(3) The provisions saved by paragraph (2) have effect subject to the amendments made by regulation 53(2) and (3).

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<sup>(37)</sup> S.R. 2011 No. 350  
<sup>(38)</sup> S.R. 2012 No. 302  
<sup>(39)</sup> S.R. 1998 No. 386  
<sup>(40)</sup> S.R. 1998 No. 422  
<sup>(41)</sup> S.R. 1999 No. 133  
<sup>(42)</sup> S.R. 2000 No. 7  
<sup>(43)</sup> S.R. 2002 No. 93  
<sup>(44)</sup> S.R. 2003 No. 119  
<sup>(45)</sup> S.R. 2003 No. 330  
<sup>(46)</sup> S.R. 2006 No. 135  
<sup>(47)</sup> S.R. 2006 No. 389  
<sup>(48)</sup> S.R. 2007 No. 340  
<sup>(49)</sup> S.R. 2009 No. 266

Sealed with the Official Seal of the Department for Employment and Learning on 18th February 2016.



*Dr. Stephen Farry*  
Minister for  
Employment and Learning

## SCHEDULES

### SCHEDULE 1

Regulation 2

#### Workforce Agreements

1. An agreement is a workforce agreement for the purposes of these Regulations if the following conditions are satisfied—

- (a) the agreement is in writing;
- (b) it has effect for a specified period not exceeding five years;
- (c) it applies either—
  - (i) to all of the relevant members of the workforce, or
  - (ii) to all of the relevant members of the workforce who belong to a particular group;
- (d) the agreement is signed—
  - (i) in the case of an agreement of the kind referred to in head (c)(i), by the representatives of the workforce, and in the case of an agreement of the kind referred to in head (c)(ii) by the representatives of the group to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature), or
  - (ii) if the employer employed 20 or fewer workers on the date referred to in head (d)(i), either by the appropriate representatives in accordance with that head or by the majority of the workers employed by the employer;
- (e) before the agreement was made available for signature, the employer provided all the workers to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those workers might reasonably require in order to understand it fully.

2. For the purposes of this Schedule—

“a particular group” is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within the employer’s business;

“relevant members of the workforce” are all of the workers employed by a particular employer, excluding any worker whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the workforce” are workers duly elected to represent the relevant members of the workforce, “representatives of the group” are workers duly elected to represent the members of a particular group, and representatives are “duly elected” if the election at which they were elected satisfied the requirements of paragraph 3.

3. The requirements concerning elections referred to in paragraph 2 are that—

- (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of the workforce are relevant members of the workforce, and the candidates for election as representatives of a group are members of the group;

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- (c) no worker who is eligible to be a candidate is unreasonably excluded from standing for election;
- (d) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group, are entitled to vote for representatives of the group;
- (e) the workers entitled to vote may vote for as many candidates as there are representatives to be elected;
- (f) the election is conducted so as to secure that—
  - (i) so far as is reasonably practicable, those voting do so in secret, and
  - (ii) the votes given at the election are fairly and accurately counted.

## SCHEDULE 2

Regulations 15(3), 18(6) and 52

### Workers Employed in Agriculture

1. Except where, in the case of a worker partly employed in agriculture, different provision is made by a relevant agreement—
  - (a) for the purposes of regulation 15 and regulation 16, the leave year of a worker employed in agriculture begins on 6th April each year or such other date as may be specified in an agricultural wages order which applies to that worker; and
  - (b) the dates on which leave is taken by a worker employed in agriculture shall be determined in accordance with an agricultural wages order which applies to that worker.
2. Where, in the case referred to in paragraph 1, a relevant agreement makes provision different from sub-paragraph (a) or (b) of that paragraph—
  - (a) Article 9(10) of the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 shall not apply to that provision; and
  - (b) an employer giving effect to that provision shall not thereby be taken to have failed to comply with the requirements of an agricultural wages order.
3. In this Schedule, “an agricultural wages order” means an order under Article 4 or 8 of the Agricultural Wages (Regulation) (Northern Ireland) Order 1977.

## SCHEDULE 3

Regulations 36(1) and (7) and 37(2) and (3)

### Enforcement

#### **Appointment of inspectors**

1.—(1) Each enforcement authority may appoint as inspectors (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect these Regulations within its field of responsibility, and may terminate any appointment made under this paragraph.

(2) Every appointment of a person as an inspector under this paragraph shall be made by an instrument in writing specifying which of the powers conferred on inspectors by these Regulations

are to be exercisable by the person appointed; and an inspector shall in right of appointment under this paragraph—

- (a) be entitled to exercise only such of those powers as are so specified; and
- (b) be entitled to exercise the powers so specified only within the field of responsibility of the appointing enforcement authority.

(3) So much of an inspector's instrument of appointment as specifies the powers which the inspector is entitled to exercise may be varied by the appointing enforcement authority.

(4) An inspector shall, if so required when exercising or seeking to exercise any power conferred by these Regulations, produce the instrument of appointment or a duly authenticated copy thereof.

### **Power of inspectors**

2.—(1) Subject to the provisions of paragraph 1 and this paragraph, an inspector may, for the purpose of carrying into effect these Regulations within the field of responsibility of the appointing enforcement authority, exercise the powers set out in sub-paragraph (2).

(2) The powers of an inspector referred to in the preceding sub-paragraph are the following, namely—

- (a) at any reasonable time (or, in a situation which in the inspector's opinion is or may be dangerous, at any time) to enter any premises which the inspector has reason to believe it is necessary to enter for the purpose mentioned in sub-paragraph (1);
- (b) to be accompanied by a constable if the inspector has reasonable cause to apprehend any serious obstruction in the execution of the inspector's duty;
- (c) without prejudice to the preceding head, on entering any premises by virtue of head (a)—
  - (i) to be accompanied by any other person duly authorised by the inspector's enforcement authority; and
  - (ii) to bring any equipment or materials required for any purpose for which the power of entry is being exercised;
- (d) to make such examination and investigation as may in any circumstance be necessary for the purpose mentioned in sub-paragraph (1);
- (e) to require any person whom the inspector has reasonable cause to believe to be able to give any information relevant to any examination or investigation under head (d) to answer (in the absence of persons other than a person nominated by the inspector to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of those answers;
- (f) to require the production of, inspect, and take copies of or of an entry in—
  - (i) any records which by virtue of these Regulations are required to be kept, and
  - (ii) any other books, records or documents which it is necessary for the inspector to see for the purposes of any examination or investigation under head (d);
- (g) to require any person to afford the inspector such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred by this paragraph;
- (h) any other power which is necessary for the purpose mentioned in sub-paragraph (1).

(3) No answer given by a person in pursuance of a requirement imposed under sub-paragraph (2) shall be admissible in evidence against that person or the spouse or civil partner of that person in any proceedings.

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(4) Nothing in this paragraph shall be taken to compel the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

### **Improvement notices**

3. If an inspector is of the opinion that a person—
  - (a) is contravening one or more of these Regulations; or
  - (b) has contravened one or more of these Regulations in circumstances that make it likely that the contravention will continue or be repeated,

the inspector may serve on that person a notice (in this Schedule referred to as “an improvement notice”) stating that the inspector is of that opinion, specifying the provision or provisions as to which the inspector is of that opinion, giving particulars of the reasons why the inspector is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under paragraph 6) as may be specified in the notice.

### **Prohibition notices**

4.—(1) This paragraph applies to any activities which are being or are likely to be carried on by or under the control of any person, being activities to or in relation to which any of these Regulations apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this paragraph applies an inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that person a notice (in this Schedule referred to as “a prohibition notice”).

- (3) A prohibition notice shall—
  - (a) state that the inspector is of the said opinion;
  - (b) specify the matters which in the inspector’s opinion give or, as the case may be, will give rise to the said risk;
  - (c) where in the inspector’s opinion any of those matters involves or, as the case may be, will involve a contravention of any of these Regulations, state that the inspector is of that opinion, specify the regulation or regulations as to which the inspector is of that opinion, and give particulars of the reasons why the inspector is of that opinion; and
  - (d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of head (b) and any associated contraventions of provisions so specified in pursuance of head (c) have been remedied.

(4) A direction contained in a prohibition notice in pursuance of sub-paragraph (3)(d) shall take effect—

- (a) at the end of the period specified in the notice; or
- (b) if the notice so declares, immediately.

### **Provisions supplementary to paragraphs 3 and 4**

5.—(1) In this paragraph “a notice” means an improvement notice or a prohibition notice.

(2) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions—



- (a) may be framed to any extent by reference to any code of practice; and
  - (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (3) Where a notice which is not to take immediate effect has been served—
- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of paragraph 3 or paragraph 4(4) as the case may be; and
  - (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

### **Appeal against improvement or prohibition notice**

- 6.—(1) In this paragraph “a notice” means an improvement notice or a prohibition notice.
- (2) A person on whom a notice is served may within a period of 21 days from the date of service of the notice appeal to an industrial tribunal; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.
- (3) Where an appeal under this paragraph is brought against a notice within the period allowed under the preceding sub-paragraph, then—
- (a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;
  - (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).
- (4) One or more assessors may be appointed for the purposes of any proceedings brought before an industrial tribunal under this paragraph.

### **Power of an enforcement authority to indemnify inspectors**

7. Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of these Regulations and the circumstances are such that the inspector is not legally entitled to require indemnity by the enforcement authority, that authority may, nevertheless, indemnify the inspector against the whole or part of any damages and costs or expenses which the inspector may have been ordered to pay or may have incurred, if the authority is satisfied that the inspector honestly believed that the act complained of was within the inspector’s powers and that the duty as an inspector required or entitled the inspector to do it.

### **Restrictions on disclosure of information**

- 8.—(1) In this and the two following sub-paragraphs—
- (a) “relevant information” means information obtained by an inspector in pursuance of a requirement imposed under paragraph 2(2)(e) or (f); and
  - (b) “the recipient”, in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be.
- (2) Subject to the following sub-paragraph, no relevant information shall be disclosed without the consent of the person by whom it was furnished.
- (3) The preceding sub-paragraph shall not apply to—

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- (a) disclosure of information to the Executive, a government department or any enforcement authority;
  - (b) without prejudice to head (a), disclosure by the recipient of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions or under these Regulations;
  - (c) without prejudice to head (a), disclosure by the recipient of information to—
    - (i) an officer of a district council who is authorised by that council to receive it; or
    - (ii) a constable authorised by the Chief Constable to receive it; or
  - (d) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case.
- (4) In the preceding sub-paragraph any reference to the Executive, a government department or an enforcement authority includes respectively a reference to an officer of that body or authority (including in the case of an enforcement authority, any inspector appointed by it), and also, in the case of a reference to the Executive, includes a reference to—
- (a) a person performing any functions of the Executive on its behalf by virtue of Article 15(1)(a) of the 1978 Order;
  - (b) an officer of a body which is so performing any such functions; and
  - (c) an adviser appointed in pursuance of Article 15(1)(c) of the 1978 Order.
- (5) A person to whom information is disclosed in pursuance of sub-paragraph (3) shall not use the information for a purpose other than—
- (a) in a case falling within sub-paragraph (3)(a), a purpose of the Executive, of the government department, or of the enforcement authority in question in connection with these Regulations or with the relevant statutory provisions, as the case may be;
  - (b) in the case of information given to an officer of a district council, the purposes of the council in connection with the relevant statutory provisions or any statutory provision whatsoever relating to working time, public health, public safety or the protection of the environment;
  - (c) in the case of information given to a constable, the purposes of the police in connection with these Regulations, the relevant statutory provisions or any statutory provision whatsoever relating to working time, public health, public safety or the safety of the State.
- (6) A person shall not disclose any information obtained as a result of the exercise of any power conferred by paragraph 2 (including in particular any information with respect to any trade secret obtained in any premises entered by virtue of any such power) except—
- (a) for the purposes of that person's functions;
  - (b) for the purposes of any legal proceedings; or
  - (c) with the relevant consent.

In this sub-paragraph “the relevant consent” means, in the case of information furnished in pursuance of a requirement imposed under paragraph 2, the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained.

(7) Notwithstanding anything in the preceding sub-paragraph an inspector shall, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) employed at any premises adequately informed about matters affecting their health, safety and welfare or working time, give to such persons or their representatives the following descriptions of information, that is to say—

- (a) factual information obtained by the inspector as mentioned in that sub-paragraph which relates to those premises or anything which was or is therein or was or is being done therein; and
  - (b) information with respect to any action which the inspector has taken or proposes to take in or in connection with those premises in the performance of the inspector's functions;
- and, where an inspector does as aforesaid, the inspector shall give the like information to the employer of the first-mentioned persons.

(8) Notwithstanding anything in sub-paragraph (6), a person who has obtained such information as is referred to in that sub-paragraph may furnish to a person who appears to the person to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of the relevant facts observed by the person in the course of exercising any of the powers referred to in that sub-paragraph.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, to the extent they are made under section 2(2) of the European Communities Act 1972 (c. 68), implement Council Directive 2003/88/EC concerning certain aspects of the organisation of working time (O.J. L299, 18.11.2003, p. 9) (which consolidated Council Directive 93/104/EC (O.J. L307, 13.12.93, p. 18) as amended by Council Directive 2000/34/EC (O.J. L195, 01.08.2000, p. 41)) and provisions concerning working time in Council Directive 94/33/EC on the protection of young people at work (O.J. L216, 20.8.94, p. 12). The provisions in the latter Directive which are implemented relate only to adolescents (those who have not attained the age of 18 and are over compulsory school age). These Regulations consolidate and replace the provisions of the Working Time Regulations (Northern Ireland) 1998 and the various Statutory Rules which amended those Regulations from 1998 to 2009.

Regulations 4 to 11 in these Regulations impose obligations on employers, enforceable by the Health and Safety Executive for Northern Ireland and district councils; failure to comply is an offence. The obligations concern the maximum average weekly working time of workers (subject to provision for individual workers to agree that the maximum should not apply to them), the average normal hours of night workers, the provision of health assessments for night workers, and rest breaks to be given to workers engaged in certain kinds of work; employers are also required to keep records of workers' hours of work.

Regulations 12 to 21 confer rights on workers, enforceable by proceedings before industrial tribunals. The rights are to a rest period in every 24 hours during which a worker works for an employer and longer rest periods each week or fortnight, to a rest break in the course of a working day, and to a period of paid annual leave.

Regulation 16 provides an entitlement for additional annual leave and is made under powers contained in Article 15 of the Work and Families (Northern Ireland) Order 2006 (N.I. 16).

Regulations 22 to 35 provide for particular regulations not to apply, either in relation to workers engaged in certain kinds of work or where particular circumstances arise. There is also provision for groups of workers and their employers to agree to modify or exclude the application of particular regulations.

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Regulation 44 part implements Council [Directive 2008/52/EC](#) (O.J. L136, 24.05.2006, p. 3) on certain aspects of mediation in civil and commercial matters, which applies to cross border disputes, by providing for the extension of limitation periods so that these do not expire during the mediation process.

The remaining regulations make provision in relation to enforcement and remedies, and in respect of agency workers, Crown servants, the police, trainees and agricultural workers.

Regulations 53 and 54 provide for consequential amendments, the revocation of the Working Time Regulations (Northern Ireland) 1998 and the various Statutory Rules which amended those Regulations from 1998 to 2009 and for savings.