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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 49**

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

**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.

*Status: Point in time view as at 15/06/2022.*

*Changes to legislation: There are currently no known outstanding effects for the The Working Time Regulations (Northern Ireland) 2016, PART 5. (See end of Document for details)*

(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<sup>M1</sup>.

(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—

- [<sup>F1</sup>(a) that person (“the complainant”) has made a service complaint in respect of the same matter, and]
- (b) that complaint has not been withdrawn.

[<sup>F2</sup>(3) Where the service complaint is dealt with by a person or panel appointed by the Defence Council by virtue of section 340C(1)(a) of the Armed Forces Act 2006, it is to be treated for the purposes of paragraph (2)(b) as withdrawn if—

- (a) the period allowed in accordance with service complaints regulations for bringing an appeal against the person’s or panel’s decision expires,
- (b) there are grounds (of which the complainant is aware) on which the complainant is entitled to bring such an appeal, and
- (c) either—
  - (i) the complainant does not apply to the Service Complaints Ombudsman for a review by virtue of section 340D(6)(a) of the Armed Forces Act 2006 (review of decision that appeal brought out of time cannot proceed), or
  - (ii) the complainant does apply for such a review and the Ombudsman decides that an appeal against the person’s or panel’s decision cannot be proceeded with.]

(4) Where a complaint of the kind referred to in paragraph (2) is presented to an industrial tribunal, the [<sup>F3</sup>procedures set out in service complaints regulations] may continue after the complaint is presented.

[<sup>F4</sup>(5) In this regulation—

“service complaint” means a complaint under section 340A of the Armed Forces Act 2006;

“service complaints regulations” means regulations made under section 340B(1) of that Act.]

### Textual Amendments

**F1** Reg. 49(2)(a) substituted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in operation) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 9(a)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2

**F2** Reg. 49(3) substituted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in operation) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 9(b)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2

**F3** Words in reg. 49(4) substituted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in operation) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 9(c)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2

**F4** Reg. 49(5) substituted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in operation) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 9(d)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2

**Marginal Citations**

**M1** 1996 c. 14

**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>M2</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.

**Marginal Citations**

**M2** S.R. 1991 No. 168

**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.

**Agricultural workers**

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

**Status:**

Point in time view as at 15/06/2022.

**Changes to legislation:**

There are currently no known outstanding effects for the The Working Time Regulations (Northern Ireland) 2016, PART 5.