STATUTORY RULES OF NORTHERN IRELAND

1998 No. 386

EMPLOYMENT

Working Time Regulations (Northern Ireland) 1998

Made - - - -	*4th November 1998*
Coming into operation	*23rd November 1998*

The Department of Economic Development, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to measures relating to the organisation of working time(**2**) and measures relating to the employment of children and young persons(**3**), in exercise of the powers conferred on it by the said section 2(2), and of every other power enabling it in that behalf, hereby makes the following Regulations–

Part I

General

Citation and commencement

1. These Regulations may be cited as the Working Time Regulations (Northern Ireland) 1998 and shall come into operation on 23rd November 1998.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**4**), except section 39(2), shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations–

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996(**5**);

"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;

(**1**) 1972 c. 68
(**2**) S.I. 1997/1174
(**3**) S.I. 1996/266
(**4**) 1954 c. 33 (N.I.)
(**5**) S.I. 1996/1919 (N.I. 16)

"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(**6**), 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 his contract;

"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 his daily working time during night time, or

(b) who is likely, during night time, to work at least such proportion of his 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 he works such hours on the majority of days on which he works;

"registered medical practitioner" means a fully registered person within the meaning of the Medical Act 1983(**7**);

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

"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)–

(**6**) 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)

(**7**) 1983 c. 54

(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(**8**) and a reference to a worker partly employed in agriculture is to a worker employed in agriculture whose employer also employs him for non-agricultural purposes;

"workforce agreement" means an agreement between an employer and workers employed by him 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 he is working, at his employer's disposal and carrying out his activity or duties,

(b) any period during which he 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;

"Working Time Directive" means Council Directive 93/104/EC of 23rd November 1993 concerning certain aspects of the organisation of working time(**9**);

"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(**10**); and

"Young Workers Directive" means Council Directive 94/33/EC of 22nd June 1994 on the protection of young people at work(**11**).

(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 Working Time Directive or the Young Workers Directive have the same meaning as they have in those corresponding provisions.

Part II

Rights and Obligations Concerning Working Time

General

3. The provisions of this Part have effect subject to the exceptions provided for in Part III.

(**8**) S.I. 1977/2151 (N.I. 22)
(**9**) O.J. No. L307, 13.12.93, p. 18
(**10**) 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)
(**11**) O.J. No. L216, 20.8.94, p. 12

Maximum weekly working time

4.—(1) Subject to regulation 5, a worker's working time, including overtime, in any reference period which is applicable in his case, shall not exceed 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 him in relation to whom it applies.

(3) Subject to paragraphs (4) and (5) and any agreement under regulation 23(*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 his employment.

(4) Where a worker has worked for his employer for less than 17 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his 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 21 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–

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 his 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 he 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 his entitlement under regulation 13;

(b) any period of sick leave taken by the worker;

(c) any period of maternity 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 virtue of regulation 5.

Agreement to exclude the maximum

5.—(1) The limit specified in regulation 4(1) shall not apply in relation to a worker who has agreed with his employer in writing that it should not apply in his case, provided that the employer complies with the requirements of paragraph (4).

(2) An agreement for the purposes of paragraph (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 his employer in writing.

(3) Where an agreement for the purposes of paragraph (1) makes provision for the termination of the agreement after a period of notice, the notice period provided for shall not exceed three months.

(4) The requirements referred to in paragraph (1) are that the employer–

(a) maintains up-to-date records which–

(i) identify each of the workers whom he employs who has agreed that the limit specified in regulation 4(1) should not apply in his case;

(ii) set out any terms on which the worker agreed that the limit should not apply; and

(iii) specify the number of hours worked by him for the employer during each reference period since the agreement came into effect (excluding any period which ended more than two years before the most recent entry in the records);

(b) permits any inspector appointed by the Department of Economic Development or any other authority which is responsible under regulation 28 for the enforcement of these Regulations to inspect those records on request; and

(c) provides any such inspector with such information as he may request regarding any case in which a worker has agreed that the limit specified in regulation 4(1) should not apply in his case.

Length of night work

6.—(1) A night worker's normal hours of work in any reference period which is applicable in his case 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 him.

(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 his employment.

(4) Where a worker has worked for his employer for less than 17 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his 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 his entitlement under regulation 11, divided by 24.

(6) A night worker's normal hours of work for the purposes of this regulation are his normal working hours for the purposes of the 1996 Order in a case where Article 5 of that Order (which provides for the interpretation of normal working hours in the case of certain employees) applies to him.