
STATUTORY RULES OF NORTHERN IRELAND

2020 No. 178

EMPLOYMENT

The Employment Rights (Northern Ireland) Order 1996 (Coronavirus, Calculation of a Week's Pay) Regulations (Northern Ireland) 2020

Made - - - - *13th August 2020*

Coming into operation *14th August 2020*

The Department for the Economy ^{F1} makes the following Regulations in exercise of the powers conferred by Article 24(4) of the Employment Rights (Northern Ireland) Order 1996 ^{F2} and now vested in it ^{F3}.

- F1** Formerly the Department of Economic Development; see [Article 3\(5\)](#) of the [Departments \(Northern Ireland\) Order 1999 \(S.I. 1999/283 \(N.I. 1\)\)](#) and section 1(3) of the Departments Act (Northern Ireland) 2016 c. 5 (N.I.).
- F2** [S.I. 1996/1919 \(N.I. 16\)](#).
- F3** The functions of the Department of Economic Development under the Employment Rights (Northern Ireland) Order 1996 were transferred to the Department of Higher and Further Education, Training and Employment by S.R. 1999 No. 481, [Article 4\(b\)](#) and Schedule 2, Part II. The Department of Higher and Further Education, Training and Employment was renamed the Department for Employment and Learning by 2001 c. 15 (N.I.), [section 1\(1\)](#), and following the dissolution of that department by the [Departments Act \(Northern Ireland\) 2016 \(c. 5 \(N.I.\)\)](#), [section 1\(10\)](#), its functions under the Employment Rights (Northern Ireland) Order 1996 were transferred to the Department for the Economy by S.R. 2016 No. 76, [Article 6\(1\)\(c\)](#).

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Employment Rights (Northern Ireland) Order 1996 (Coronavirus, Calculation of a Week's Pay) Regulations (Northern Ireland) 2020 and come into operation on 14th August 2020.

Interpretation

2.—(1) In these Regulations—

“the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996;

[^{F4}“Coronavirus Job Retention Scheme” means the scheme of that name established by the Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction, given by the Treasury under sections 71 and 76 of the Coronavirus Act 2020 on 15th April 2020, as modified from time to time by further Directions given by the Treasury under those sections, to provide for claims to be made in respect of E in relation to any period ending on or before [^{F5}30th September] 2021;]

“E” has the meaning given in regulation 3(1);

^{F6}
...

“flexibly-furloughed employee” has the meaning given in [^{F7}the Coronavirus Job Retention Scheme];

“furloughed employee” has the meaning given in [^{F8}the Coronavirus Job Retention Scheme] ;

“furloughed hours”, in relation to E, means those hours that E does not work as the result of an instruction given by their employer for the purposes of the Coronavirus Job Retention Scheme;

“the relevant date”, in relation to E—

(a) means the calculation date ^{F9}, in any case where—

- (i) E's working hours under their contract of employment changed, on or after the date on which E became furloughed but before the calculation date, and
- (ii) at the time that change was made, its contractual effect was that the change in working hours was to continue when E ceased to be furloughed or flexibly-furloughed, and

(b) in any other case, means the date immediately before the date on which E became furloughed;

^{F10}
...

^{F11}
...

(2) Except in this paragraph and paragraph (1), any reference in these Regulations to an employee who is, or has been, “furloughed” is to an employee who is, or has been, a furloughed employee or a flexibly-furloughed employee.

(3) For the purposes of these Regulations, where E becomes furloughed more than once, “the date on which E became furloughed” means the first date on which E became furloughed.

(4) For the purposes of these Regulations, any reference to remuneration varying with the amount of work done includes remuneration which may include any commission or similar payment which varies in amount.

F4 Words in reg. 2(1) substituted (27.11.2020) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Coronavirus, Calculation of a Week's Pay\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/281\)](#), regs. 1, **3(a)**

F5 Words in reg. 2(1) substituted (30.4.2021) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Coronavirus, Calculation of a Week's Pay\) \(Amendment\) \(No. 2\) Regulations \(Northern Ireland\) 2021 \(S.R. 2021/112\)](#), regs. 1, **3**

F6 Words in reg. 2(1) omitted (27.11.2020) by virtue of [The Employment Rights \(Northern Ireland\) Order 1996 \(Coronavirus, Calculation of a Week's Pay\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/281\)](#), regs. 1, **3(b)**

- F7** Words in reg. 2(1) substituted (27.11.2020) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Coronavirus, Calculation of a Week's Pay\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/281\)](#), regs. 1, **3(c)**
- F8** Words in reg. 2(1) substituted (27.11.2020) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Coronavirus, Calculation of a Week's Pay\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/281\)](#), regs. 1, **3(d)**
- F9** See Articles 21(2), 22(1) to 22(6) of the 1996 Order for the meaning of “the calculation date”.
- F10** Words in reg. 2(1) omitted (27.11.2020) by virtue of [The Employment Rights \(Northern Ireland\) Order 1996 \(Coronavirus, Calculation of a Week's Pay\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/281\)](#), regs. 1, **3(e)**
- F11** Words in reg. 2(1) omitted (27.11.2020) by virtue of [The Employment Rights \(Northern Ireland\) Order 1996 \(Coronavirus, Calculation of a Week's Pay\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/281\)](#), regs. 1, **3(f)**

PART 2

Calculation of a week's pay

Calculation of a week's pay in relation to furloughed employees

3.—(1) These Regulations prescribe the manner in which the amount of a week's pay^{F12} is to be calculated in the case of an employee who is, or has been, furloughed (“E”), subject to paragraph (2), where—

- (a) E is entitled pursuant to Article 81 or 82 of the 1996 Order to be paid remuneration for a period of absence to look for employment or arrange training as a result of a notice of dismissal given on or after the date on which E became furloughed, for the calculation of that remuneration under Part 7 of the 1996 Order,
- (b) E is entitled to payment pursuant to Article 120 or 121 of the 1996 Order as a result of a notice to terminate E's contract of employment given on or after the date on which E became furloughed, for the calculation of that payment under Part 10 of the 1996 Order,
- (c) E is entitled pursuant to Article 125 of the 1996 Order to be paid a sum as a result of a failure by their employer relating to the obligation to provide a written statement giving particulars of the reasons for E's dismissal, and the notice to terminate E's contract of employment was given or (if the dismissal was without notice) the date of termination was on or after the date on which E became furloughed, for the calculation of that sum under Part 10 of the 1996 Order,
- (d) E is entitled pursuant to Article 151 of the 1996 Order to be paid an additional award of compensation as a result of a failure by their employer to comply with an order for reinstatement or re-engagement, and the notice to terminate E's contract of employment was given or (if the dismissal was without notice) the date of termination was on or after the date on which E became furloughed, for the calculation of that additional award under Part 11 of the 1996 Order,
- (e) E is entitled to an award of compensation for unfair dismissal calculated in accordance with Articles 152 to 160 of the 1996 Order, and the notice to terminate E's contract of employment was given or (if the dismissal was without notice) the date of termination was on or after the date on which E became furloughed, for the calculation of that award under Part 11 of the 1996 Order,
- (f) E is entitled to a redundancy payment under Part 12 of the 1996 Order, and the notice to terminate E's contract of employment was given or (if the dismissal was without notice)

the date of termination was on or after the date on which E became furloughed, for the calculation of that redundancy payment under Part 12 of the 1996 Order, and

- (g) E may be eligible for a redundancy payment in accordance with Article 183 of the 1996 Order by reason of being laid off or kept on short-time on or after the date on which E became furloughed, for the assessment of whether E is to be taken to be kept on short-time in accordance with Article 182(2) of the 1996 Order.

(2) These Regulations only apply—

- (a) in a case where regulation 4 applies, where the calculation date is on or before [^{F13}30th September] 2021; or
- (b) in a case where regulation 5, 6 or 8 applies, where the relevant period, within the meaning given in regulation 5, 6 or 8 (as the case may be) includes a week when E was furloughed.

(3) For the purposes of paragraph (1), “the date of termination” means the date on which termination of E's contract of employment takes effect.

F12 See Article 2(3) of the 1996 Order for the definition of a “week”.

F13 Words in [reg. 3\(2\)\(a\)](#) substituted (30.4.2021) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Coronavirus, Calculation of a Week's Pay\) \(Amendment\) \(No. 2\) Regulations \(Northern Ireland\) 2021 \(S.R. 2021/112\)](#), regs. 1, 4

Normal working hours and remuneration does not vary with the amount of work done

4.—(1) This regulation applies where E's remuneration fell within the description in Article 17(2) of the 1996 Order (remuneration for employment in normal working hours which does not vary with the amount of work done) on the relevant date.

(2) The amount of a week's pay is the amount which is payable by the employer under E's contract of employment in force on the calculation date if E works throughout E's normal working hours in a week, and for these purposes—

- (a) E's normal working hours, in relation to any period during which E is furloughed, include E's furloughed hours, and
- (b) the amount which is payable, in relation to any period during which E is furloughed, is to be calculated disregarding any reduction in the amount payable as a result of E being furloughed.

(3) This regulation is subject to regulations 6, 9 and 10.

Normal working hours and remuneration varies with the amount of work done

5.—(1) This regulation applies where E's remuneration fell within the description in Article 17(3) of the 1996 Order (remuneration for employment in normal working hours which varies with the amount of work done) on the relevant date.

(2) The amount of a week's pay is the amount of remuneration for the number of normal working hours in a week, calculated at the average hourly rate of remuneration payable by the employer to E in respect of the relevant period.

(3) Where E is furloughed for any part of the relevant period—

- (a) E's normal working hours in a week, in relation to that part of the relevant period, include E's furloughed hours, and
- (b) for the purposes of the calculation of the average hourly rate of remuneration payable for the relevant period, the hourly rate of remuneration for that part of the relevant period is