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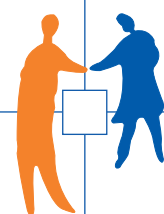
TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES
(Including Guidance on Time Off for Union Learning Representatives)

Should you require this Code of Practice in an alternative format or language, please contact the Agency.

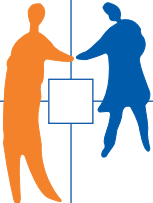
TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

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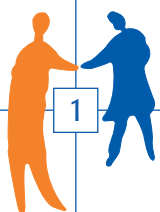
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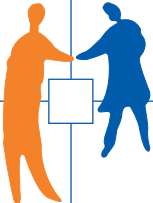
TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

PREAMBLE

This Code replaces the Labour Relations Agency Code of Practice on Time Off for Trade Union Duties and Activities, which came into effect on 10th May 1993. This Code is issued under Article 90(1) and (13) of the Industrial Relations (Northern Ireland) Order 1992 with the approval of the Department for Employment and Learning (“the Department”), on 7th May 2004. It comes into effect, by order of the Department, on 20th May 2004. The earlier Code shall cease to have effect on 19th May 2004 except in relation to any act done on or before that day.



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TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

INTRODUCTION

1. Under Article 90 of the Industrial Relations (Northern Ireland) Order 1992 (“the 1992 Order”) the Labour Relations Agency has a duty to provide practical guidance on the time off to be permitted by an employer:

(a) to a trade union official in accordance with Article 92 of the Employment Rights (Northern Ireland) Order 1996 (“the 1996 Order”); and

(b) to a trade union member in accordance with Article 94 of the 1996 Order.

Article 90 of the 1992 Order, as amended by the Employment (Northern Ireland) Order 2003, also provides for the Agency to issue practical guidance on time off and training for Union Learning Representatives. This Code, which replaces the Code of Practice issued by the Agency in 1993, is intended to provide such guidance.

The Background

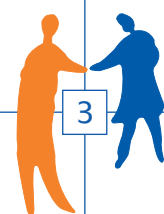
2. Since 1976, under the Industrial Relations (No. 2) (Northern Ireland) Order 1976 (which has since been repealed and replaced), trade union officials have had a statutory right to reasonable paid time off from employment to carry out trade union duties and to undertake trade union training. Union officials and members were also given a statutory right to reasonable unpaid time off when taking part in trade union activities. The time off provisions are now enshrined in Articles 92-95 of the 1996 Order.

3. Article 92 of the 1996 Order restricts the range of issues for which paid time off for trade union duties can be claimed to those covered by recognition agreements between employers and trade unions. Additionally union duties must relate to the official’s own employer and not, for example, to any associated employer.

4. Article 31 of the Employment (Northern Ireland) Order 2003 inserted a new Article 92A into the 1996 Order giving Union Learning Representatives a right to take paid time off during working hours to undertake their duties and to undertake relevant training. Union Learning Representatives are appointed or elected trade union representatives focusing on the learning agenda in the workplace. They provide information and advice about training or learning matters and promote the value of training or learning (see paragraph 15 for further information on their functions). The 2003 Order also gave union members a statutory right to reasonable unpaid time off for the purpose of having access to the services of a Union Learning Representative.

General Purpose of the Code

5. The general purpose of the statutory provisions and this Code of Practice is to aid and improve the effectiveness of relationships between employers and trade unions. Employers and unions have a joint responsibility to ensure that agreed arrangements work to mutual advantage by specifying how reasonable time off for union duties and activities and for training will work. This may be particularly important in the case of Union Learning Representatives where the lack of such an understanding may result in duplication of functions concerning employees’ training needs.



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Structure of the Code

6. Section 1 of this Code provides guidance on time off for trade union duties. Section 2 deals with time off for training of trade union officials and offers guidance on sufficient training for Union Learning Representatives. Section 3 considers time off for trade union activities. In each case the amount and frequency of time off, and the purposes for which and any conditions subject to which time off may be taken, are to be those that are reasonable in all the circumstances. Section 4 describes the responsibilities which employers and trade unions share in considering reasonable time off. Section 5 notes the advantages of reaching formal agreements on time off. Section 6 deals with industrial action and Section 7 with methods of appeal.
7. In the main text of the Code, summaries of statutory provisions in relation to time off appear in **bold type**. Practical guidance is in ordinary type. While every effort has been made to ensure that the summaries of the statutory provisions included in this Code are accurate, only the courts can interpret the law authoritatively. The annex to this Code reproduces the relevant statutory provisions on time off.

Status of the Code

8. The provisions of this Code are admissible in evidence and may be taken into account in determining any question arising during industrial tribunal proceedings relating to time off for trade union duties and activities. However, failure to observe any provision of the Code does not of itself render a person liable to any proceedings.



TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

SECTION 1: TIME OFF FOR TRADE UNION DUTIES

Entitlement

9. Employees who are officials of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to carry out certain trade union duties.
10. An official is an employee who has been elected or appointed in accordance with the rules of the union to be a representative of all or some of the union's members in the particular company or workplace.
11. Officials are entitled to time off where the duties are concerned with:
 - negotiations with the employer about matters which fall within Article 96(1) of the 1992 Order and for which the union is recognised for the purposes of collective bargaining by the employer; or
 - any other functions on behalf of employees of the employer which are related to matters falling within Article 96(1) of the 1992 Order and which the employer has agreed the union may perform.

Matters falling within Article 96(1) of the 1992 Order are listed in the sub-headings of paragraph 13 below.

12. An independent trade union is recognised by an employer when it is recognised to any extent for the purposes of collective bargaining. Where a trade union is not so recognised by an employer, employees have no statutory right to time off to undertake any trade union duties. However, regardless of whether or not an employer recognises the trade union, workers have a statutory right to reasonable paid time off to accompany another of their employer's workers at certain types¹ of disciplinary and grievance hearings (see also paragraph 18).

Examples of Trade Union Duties

13. Subject to the recognition or other agreement, trade union officials should be allowed to take reasonable time off for duties concerned with negotiations or, where their employer has agreed, for duties concerned with other functions related to or connected with:
 - (a) **terms and conditions of employment, or the physical conditions in which workers are required to work.** Examples could include:
 - pay
 - hours of work
 - holidays and holiday pay
 - sick pay arrangements
 - pensions

¹ This right of accompaniment is contained in the Employment Relations (Northern Ireland) Order 1999. For purposes of the right disciplinary hearings are defined as meetings which could result in the issuing of a formal warning, the taking of some other disciplinary action or the confirmation of a warning issued or some other disciplinary action taken. A grievance hearing is a meeting which concerns the performance of a duty by an employer in relation to a worker.



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- learning and training needs
 - equal opportunities
 - notice periods
 - the working environment
 - operation of digital equipment and other machinery;
- (b) **engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers.** Examples could include:
- recruitment and selection policies
 - human resource planning
 - redundancy and dismissal arrangements;
- (c) **allocation of work or the duties of employment as between workers or groups of workers.** Examples could include:
- job grading
 - job evaluation
 - job descriptions
 - flexible working practices
 - family friendly policies;
- (d) **matters of discipline.** Examples could include:
- disciplinary procedures
 - arrangements for representing trade union members at internal interviews
 - arrangements for appearing on behalf of trade union members, or as witnesses, before agreed outside appeal bodies or industrial tribunals;
- (e) **trade union membership or non-membership.** Examples could include:
- representational arrangements
 - any union involvement in the induction of new workers;
- (f) **facilities for officials of trade unions.** Examples could include any agreed arrangements for the provision of:
- accommodation
 - equipment
 - names of new workers to the union;



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(g) **machinery for negotiation or consultation and other procedures.** Examples could include arrangements for:

- collective bargaining
- grievance procedures
- joint consultation
- communicating with members
- communicating with other union officials also concerned with collective bargaining with the employer.

14. The duties of an official of a recognised trade union must be connected with or related to negotiations or the performance of certain functions both in time and subject matter. Reasonable time off may be sought, for example, to:

- prepare for negotiations
- inform members of progress
- explain outcomes to members
- prepare for meetings with the employer about matters for which the trade union has only representational rights.

Union Learning Representatives

15. **Employees who are members of an independent trade union recognised by the employer can take reasonable time off to undertake the duties of a Union Learning Representative, provided that the union has given the employer notice in writing that the employee is a learning representative of the trade union and the training condition is met.** (See paragraphs 24-29 for further information on the training condition.) **The functions for which time off as a Union Learning Representative is allowed are:**

- analysing learning or training needs
- providing information and advice about learning or training matters
- arranging learning or training
- promoting the value of learning or training
- consulting the employer about carrying on any such activities
- preparation to carry out any of the above activities
- undergoing relevant training

In practice, the roles and responsibilities of Union Learning Representatives will often vary by union and by workplace but will include one or more of these functions.

16. Many employers have in place well-established training and development programmes for their employees. Union Learning Representatives should liaise with their employers to ensure that their respective training activities complement one another and that the scope for duplication is minimised.



Payment for Time Off for Trade Union Duties

17. An employer who permits officials time off for trade union duties or who permits Union Learning Representatives time off to carry out their functions must pay them for the time off taken. The employer must pay either the amount that the officials or learning representatives would have earned had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do. There is no statutory requirement to pay for time off where the duty is carried out at a time when the official or learning representatives would not otherwise have been at work, but staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases the amount of time off must be reasonable.

Time Off to Accompany Workers at Disciplinary or Grievance Hearings

18. Trade union officials who are not employed by a trade union are statutorily entitled to take a reasonable amount of paid time off to accompany a worker at certain types¹ of disciplinary or grievance hearings so long as they have been certified by their union as being capable of acting as a worker's companion. The right to paid time off in these situations applies regardless of whether the certified official belongs to a recognised union or not although the worker being accompanied must be employed by the same employer. Both time off and any payment for a certified official to accompany a worker of another employer are matters for voluntary agreement between the certified official and his/her employer (see also paragraph 12).



¹ *Ibid*

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SECTION 2: TRAINING OF OFFICIALS IN ASPECTS OF EMPLOYMENT RELATIONS AND EMPLOYEE DEVELOPMENT

Entitlement

19. Employees who are officials of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to undergo training relevant to the carrying out of their trade union duties². These duties must be concerned with:
- negotiations with the employer about matters which fall within Article 96(1) of the 1992 Order and for which the union is recognised to any extent for the purposes of collective bargaining by the employer; or
 - any other functions on behalf of employees of the employer which are related to matters falling within Article 96(1) of the 1992 Order and which the employer has agreed the union may perform.

Matters falling within Article 96(1) of the 1992 Order are set out in paragraph 13 above.

20. Employees who are Trade Union Learning Representatives are also permitted reasonable time off during working hours to undergo training relevant to their functions as a Union Learning Representative.

What is Relevant Employment Relations Training?

21. Training should be in aspects of employment relations relevant to the duties of an official. There is no one recommended syllabus for training, as an official's duties will vary according to:
- the collective bargaining arrangements at the place of work, particularly the scope of the recognition or other agreement
 - the structure of the union
 - the role of the official.
22. The training must also be approved by the Northern Ireland Committee of the Irish Congress of Trade Unions or by the independent trade union of which the employee is an official.
23. Trade union officials are more likely to carry out their duties effectively if they possess skills and knowledge relevant to their duties. In particular, employers should be prepared to consider releasing trade union officials for initial training in basic representational skills as soon as possible after their election or appointment, bearing in mind that suitable courses may be infrequent. Reasonable time off could also be considered, for example:
- for further training, particularly where the official has special responsibilities
 - for training courses to develop the official's skills in representation and negotiation

² Section 1 of this Code gives a more complete summary of the statutory entitlement of officials to time off to undertake trade union duties.



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- where there are proposals to change the structure and topics of negotiation about matters for which the union is recognised; or where significant changes in the organisation of work are being contemplated
- where legislative change may affect the conduct of employment relations at the place of work and may require the reconsideration of existing agreements.

Training for Union Learning Representatives

24. Employees who are members of an independent trade union recognised by the employer are entitled to reasonable paid time off to undertake the functions of a Union Learning Representative. To qualify for paid time off the member must be sufficiently trained to carry out duties as a learning representative:

- either at the time when their trade union gives notice to their employer in writing that they are a learning representative of the trade union
- or within six months of that date.

25. In the latter case, the trade union is required to give the employer notice in writing that the employee will be undergoing such training and, when the employee has done so, to give the employer notice of that fact. It should be confirmed by the union in a letter that the training undertaken is sufficient to allow the Union Learning Representative to undertake their role and it is good practice for the union to give details of the training which has been completed and any previous training that has been taken into account. In the interests of good practice, the six month qualifying period during which an untrained Union Learning Representative must receive sufficient training to continue operating as a learning representative may be extended, with agreement, to take into account any significant unforeseen circumstances such as prolonged absence from work due to ill health, pregnancy or bereavement.

26. To satisfy this training requirement an employee will need to be able to demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of the following areas of activity relevant to their duties as a Union Learning Representative:

analysing learning or training needs

- this could for example include understanding the different methods for identifying learning interests or needs, being able to identify effectively and record individual learning needs or being able to draw up a plan to meet identified learning requirements.

providing information and advice about learning or training matters

- including, for example, the development of communication and interviewing skills
- knowledge of available opportunities, in order to be able to provide accurate information to members about learning opportunities within and outside the workplace



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- the ability to “signpost” members to other sources of advice and guidance where additional support is needed – for example, basic skills tutors or fuller in-depth professional career guidance.

arranging and supporting learning and training

- for example, obtaining and providing information on learning opportunities, supporting and encouraging members to access learning opportunities and helping to develop and improve local learning opportunities.

promoting the value of learning and training

- some examples of this activity could be: understanding current initiatives for the development of learning and skills in the workplace, promoting the value of learning to members and within trade union networks and structures, and working with employers to meet the learning and skill needs of both individuals and the organisation.

27. An employee could demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of these areas of activity by:

- completing a training course approved by the Northern Ireland Committee of the Irish Congress of Trade Unions or by the independent trade union of which the employee is a Union Learning Representative, or
- showing that they have previously gained the relevant expertise and experience to operate effectively as a Union Learning Representative.

In the latter case, previous experience and expertise gained in areas such as teaching, training, counselling, providing careers advice and guidance or human resource development may well be relevant, as may periods of extensive on-the-job training and experience gained in shadowing an experienced Union Learning Representative.

28. Reasonable time off should also be considered for further training to help Union Learning Representatives develop their skills and competencies.

29. Although not required by law it is recognised that there would be clear advantages both to the individual and the organisation if training undertaken leads to a recognised qualification standard.

Payment for Time Off for Training

30. An employer who permits time off for officials or Union Learning Representatives to attend training relevant to their duties at the workplace must pay them for the time off taken. The employer must pay either the amount that the officials or Union Learning Representatives would have earned had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do. There is no statutory requirement to pay for time off where training is undertaken at a time when the official would not otherwise have been at work, but staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases, the amount of time off must be reasonable.



SECTION 3: TIME OFF FOR TRADE UNION ACTIVITIES

Entitlement

31. To operate effectively and democratically, trade unions need the active participation of members. It can also be very much in employers' interests that such participation is assured. **An employee who is a member of an independent trade union recognised by the employer in respect of that description of employee is to be permitted reasonable time off during working hours to take part in any trade union activity. An employee who is a member of an independent and recognised trade union is also permitted to take reasonable time off during working hours for the purposes of accessing the services of a Union Learning Representative.**

What are Examples of Trade Union Activities?

32. The activities of a trade union member can be, for example:
- attending workplace meetings to discuss and vote on the outcome of negotiations with the employer
 - meeting full-time officials to discuss issues relevant to the workplace
 - voting in union elections.
33. Where the member is acting as a representative of a recognised union, activities can be, for example, taking part in:
- branch, area or regional meetings of the union where the business of the union is under discussion
 - meetings of official policy-making bodies such as the executive committee or annual conference
 - meetings with full-time officials to discuss issues relevant to the workplace.
34. **There is no right to time off for trade union activities which themselves consist of industrial action.**

Payment for Time Off for Trade Union Activities

35. Paragraph 17 sets out the statutory entitlement to payment for time off to undertake trade union duties and learning representative functions.
36. **There is no statutory requirement that union members or representatives be paid for time off taken on trade union activities or that union members be paid for time off taken for accessing the services of learning representatives.** Nevertheless, employers may want to consider payment in certain circumstances – for example to ensure that workplace meetings are fully representative or to ensure that employees can make use of the services of a Union Learning Representative.



SECTION 4: THE RESPONSIBILITIES OF EMPLOYERS AND TRADE UNIONS

General Considerations

37. **The amount and frequency of time off should be reasonable in all the circumstances.** Although the statutory provisions apply to all employers without exception as to size and type of business or service, trade unions should be aware of the wide variety of difficulties and operational requirements to be taken into account when seeking or agreeing arrangements for time off, for example:
- the size of the organisation and the number of workers
 - the production process
 - the need to maintain a service to the public
 - the need for safety and security at all times.
38. Employers in turn should have in mind the difficulties for trade union officials and members in ensuring effective representation and communications with, for example:
- shift workers
 - part-time workers
 - home workers
 - those employed at dispersed locations
 - workers with particular domestic commitments.
39. For time off arrangements to work satisfactorily, trade unions should:
- ensure that officials are aware of their role, responsibilities and functions
 - inform management, in writing, as soon as possible of appointments or resignations of officials
 - ensure that officials receive any appropriate written credentials promptly
 - ensure that employers receive details of the functions of union officials where they carry out special duties or functions.
40. Employers should consider making available to officials the facilities necessary for them to perform their duties efficiently and communicate effectively with their members, colleague lay officials and full-time officers. Where resources permit, the facilities could include:
- accommodation for meetings, which could include provision for Union Learning Representatives and a union member(s) to meet to discuss relevant training matters
 - access to a telephone and other office equipment
 - the use of notice boards, which could include other forms of electronic communications such as e-mail and intranet/internet
 - where the volume of the official's work justifies it, the use of dedicated office space.



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Requesting Time Off

41. Trade union officials and members requesting time off to pursue their duties or activities or to access the services of a Union Learning Representative should provide management with as much notice as possible and give details of:
 - the purpose of such time off
 - the intended location
 - the timing and duration of time off required.

42. In addition, officials who request paid time off to undergo relevant training should:
 - give at least a few weeks' notice to management of nominations for training courses
 - provide a copy of the syllabus or prospectus indicating the contents of the training course.

43. When deciding whether requests for paid time off should be granted, consideration would need to be given as to their reasonableness, for example to ensure adequate cover for safety or to safeguard the production process or the provision of service. Consideration could also be given to allowing Union Learning Representatives access to a room in which they can discuss training in a confidential manner with an employee. Similarly managers and unions should seek to agree a mutually convenient time which minimises the effect on production or services. Where workplace meetings are requested, consideration should be given to holding them, for example:
 - towards the end of a shift or the working week
 - before or after a meal break.

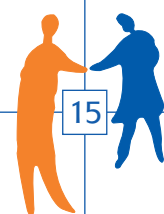
44. Employers need to consider each application for time off on its merits; they might also need to consider the reasonableness of the request in relation to agreed time off already taken or in prospect.



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SECTION 5: AGREEMENTS ON TIME OFF

45. To take account of the wide variety of circumstances and problems which can arise, there can be positive advantages for employers and trade unions in establishing agreements on time off in ways which reflect their own situations. A formal agreement can help to:
- provide clear guidelines against which applications for time off can be determined
 - avoid misunderstanding
 - facilitate better planning
 - ensure fair and reasonable treatment.
46. Agreements should specify:
- the amount of time off permitted
 - the occasions on which time off can be taken
 - in what circumstances time off will be paid
 - to whom time off will be paid
 - the procedure for requesting time off
 - the procedure for resolving grievances about time off.
47. In addition, it would be sensible for agreements to make clear:
- arrangements for the appropriate payment to be made when time off relates in part to union duties and in part to union activities
 - whether payment (to which there would be no *legal* entitlement) might be made where employees undertake trade union duties outside their normal working hours.
48. Agreements for time off and other facilities for union representation should be consistent with wider agreements which deal with such matters as constituencies, numbers of representatives and the election of officials.
49. In smaller organisations, it might be thought more appropriate for employers and unions to reach understandings about how requests for time off are to be made; and more broadly to agree flexible arrangements which can accommodate their particular circumstances.
50. The absence of a formal agreement on time off, however, does not in itself deny an individual any statutory entitlement. Nor does any agreement supersede statutory entitlement to time off.



SECTION 6: INDUSTRIAL ACTION

51. Employers and unions have a responsibility to use agreed procedures to settle problems and avoid industrial action. Time off may therefore be permitted for this purpose, particularly where there is a dispute. **There is no right to time off for trade union activities which themselves consist of industrial action.** However, where an official is not taking part in industrial action but represents members involved, normal arrangements for time off with pay for the official should apply.



SECTION 7: RESOLVING DISPUTES

52. Every effort should be made at the workplace to resolve any dispute or grievance in relation to time off work for union duties or activities. There is advantage in agreeing ways in which such disputes can be settled and any appropriate procedures to resolve disputes should be followed. **Where the grievance remains unresolved, trade union officials, Union Learning Representatives or members have a right to complain to an industrial tribunal that their employer has failed to allow reasonable time off or, in the case of a Union Learning Representative or official, has failed to pay for all or part of the time off taken. Such complaints may be resolved by conciliation by the Labour Relations Agency and, if this is successful, no tribunal hearing will be necessary.** Assistance from the Labour Relations Agency may also be sought without the need for a formal complaint to a tribunal.



ANNEX: THE LAW ON TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

Employment Rights (Northern Ireland) Order 1996

Article 92 of the Employment Rights (Northern Ireland) Order 1996, as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations (Northern Ireland) 1999, states:

- (1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with—
 - (a) negotiations with the employer related to or connected with matters falling within Article 96(1) of the 1992 Order in relation to which the trade union is recognised by the employer, or
 - (b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union, or
 - (c) receipt of information from the employer and consultation by the employer under Article 216 or under the Transfer of Undertakings (Protection of Employment) Regulations 1981.
- (2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations—
 - (a) relevant to the carrying out of such duties as are mentioned in paragraph (1), and
 - (b) approved by the Northern Ireland Committee of the Irish Congress of Trade Unions or by the independent trade union of which he is an official.
- (3) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.
- (4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Article 92A of the Employment Rights (Northern Ireland) Order 1996, inserted by Employment (Northern Ireland) Order 2003 states:

- (1) An employer shall permit an employee of his who is—
 - (a) a member of an independent trade union recognised by the employer, and
 - (b) a learning representative of the trade union,to take time off during his working hours for any of the following purposes.



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- (2) The purposes are—
 - (a) carrying on any of the following activities in relation to qualifying members of the trade union—
 - (i) analysing learning or training needs,
 - (ii) providing information and advice about learning or training matters,
 - (iii) arranging learning or training, and
 - (iv) promoting the value of learning or training.
 - (b) consulting the employer about carrying on any such activities in relation to such members of the trade union,
 - (c) preparing for any of the things mentioned in paragraphs (a) and (b).
- (3) Paragraph (1) only applies if—
 - (a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and
 - (b) the training condition is met in relation to him.
- (4) The training condition is met if—
 - (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in paragraph (2), and the trade union has given the employer notice in writing of that fact,
 - (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
 - (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.
- (5) Only one notice under paragraph (4)(b) may be given in respect of any one employee.
- (6) References in paragraph (4) to sufficient training to carry out the activities mentioned in paragraph (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by the Agency or the Department.
- (7) If an employer is required to permit an employee to take time off under paragraph (1), he shall also permit the employee to take time off during his working hours for the following purposes—
 - (a) undergoing training which is relevant to his functions as a learning representative, and
 - (b) where the trade union has in the last six months given the employer notice under paragraph (4)(b) in relation to the employee, undergoing such training as is mentioned in paragraph (4)(a).



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- (8) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by the Agency or the Department.
- (9) In paragraph (2)(a), the reference to qualifying members of the trade union is to members of the trade union—
 - (a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
 - (b) in relation to whom it is the function of the Union Learning Representative to act as such.
- (10) For the purposes of this Article—
 - (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules;
 - (b) the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.
- (11) The Department may by order amend the preceding provisions of this Article for the purpose of changing the purposes for which an employee may take time off under this Article.

Article 93 of the Employment Rights (Northern Ireland) Order 1996, as amended by Employment (Northern Ireland) Order 2003 states:

- (1) An employer who permits an employee to take time off under Article 92 or 92A shall pay him for the time taken off pursuant to the permission.
- (2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.
- (3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.
- (4) The average hourly earnings mentioned in paragraph (3) are—
 - (a) those of the employee concerned, or
 - (b) if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.



TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

- (5) A right to be paid an amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 92 or 92A goes towards discharging any liability of the employer under paragraph (1) in respect of that period; and, conversely, any payment under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Article 94 of the Employment Rights (Northern Ireland) Order 1996, as amended by Employment (Northern Ireland) Order 2003 states:

- (1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in—
 - (a) any activities of the union, and
 - (b) any activities in relation to which the employee is acting as a representative of the union.
- (2) The right conferred by paragraph (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.
- (2A) The right conferred by paragraph (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.
- (2B) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of having access to services provided by a person in his capacity as a learning representative of the trade union.
- (2C) Paragraph (2B) only applies if the learning representative would be entitled to time off under paragraph (1) of Article 92A for the purpose of carrying on in relation to the employee activities of the kind mentioned in paragraph (2) of that Article.
- (3) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.
- (4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.



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- (5) For the purposes of this Article—
- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and
 - (b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in Article 92A(2) in that capacity.

Article 95 of the Employment Rights (Northern Ireland) Order 1996, as amended by Employment (Northern Ireland) Order 2003 states:

- (1) An employee may present a complaint to an industrial tribunal that his employer—
- (a) has failed to permit him to take time off as required by Article 92, 92A or 94, or
 - (b) has failed to pay him in accordance with Article 93.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the date when the failure occurred, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (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 employee.
- (4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard
- (a) the employer's default in failing to permit time off to be taken by the employee, and
 - (b) any loss sustained by the employee 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 an employee in accordance with Article 93, it shall order the employer to pay the amount which it finds to be due.



TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

Article 2(3) of the Employment Rights (Northern Ireland) Order 1996 states:

'Independent trade union' means a trade union which –

- (a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations, and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatever) tending towards such control.

Industrial Relations (Northern Ireland) Order 1992

Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992, as amended by the Trade Union and Labour Relations (Northern Ireland) Order 1995 states:

"collective agreement" means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters mentioned in Article 96(1);

"collective bargaining" means negotiations relating to or connected with one or more of the matters mentioned in Article 96(1).

Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992 referred to above reads:

- (1) In this Part "trade dispute" means a dispute between employers and workers, or between workers and workers, which is connected with one or more of the following, that is to say—
 - (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
 - (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
 - (c) allocation of work or the duties of employment as between workers or groups of workers;
 - (d) matters of discipline;
 - (e) the membership or non-membership of a trade union on the part of a worker;
 - (f) facilities for officials of trade unions;
 - (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.



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Article 39(2) of the Industrial Relations (Northern Ireland) Order 1992 defines “recognised” for the purposes of Part V of the Order, in the following way:

“recognised”, in relation to a trade union, means recognised by an employer to any extent for the purpose of collective bargaining;

[Note: that is to say, negotiations related to or connected with one or more of the matters specified in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992, referred to above.]

Trade Union and Labour Relations (Northern Ireland) Order 1995

Article 2(2) of the Trade Union and Labour Relations (Northern Ireland) Order 1995, in relation to an official, states:

“official”, in relation to a trade union, means—

- (a) an officer of the union or of a branch or section of the union, or
- (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them,

and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent.



TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

USEFUL INFORMATION

The right to paid time off for employees who seek election as, or who carry out the functions of, employee representatives for the purposes of consultation on collective redundancies and on business transfers (found in Articles 89 and 90 of the 1996 Order) falls outside the scope of the Code of Practice on Time Off for Trade Union Duties and Activities. More information about these rights can be found in the following Department for Employment and Learning publications:

ER4 – Redundancy consultation and notification (collective redundancies)

ER11 – Employment rights on the transfer of an undertaking (business transfers)



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