

Status: This version of this schedule contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Coronavirus Act 2020, SCHEDULE 7. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 7

Section 8

EMERGENCY VOLUNTEERING LEAVE

^{F1}PART 1

ENTITLEMENT TO EMERGENCY VOLUNTEERING LEAVE

Textual Amendments

F1 Sch. 7 Pt. 1 expires (17.7.2021) by [The Coronavirus Act 2020 \(Early Expiry\) Regulations 2021 \(S.I. 2021/856\)](#), **reg. 2(1)(a)** (see 2020 c. 7, s. 89(2)(n))

Entitlement to emergency volunteering leave

^{F1}₁

Meaning of “volunteering period”

^{F1}₂

Exceptions to entitlement to emergency volunteering leave

^{F1}₃

Meaning of “appropriate authority”

^{F1}₄

PART 2

EFFECT OF TAKING EMERGENCY VOLUNTEERING LEAVE

Application of terms and conditions of employment

- 5
- (1) An employee who takes emergency volunteering leave is, during any period of leave—

(a) entitled to the benefit of all of the terms and conditions of employment which would have applied if the employee had not been absent, and

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- (b) bound by any obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph 1).

(2) In sub-paragraph (1) “terms and conditions of employment”—

- (a) includes matters connected with an employee's employment whether or not they arise under the contract of employment, but
- (b) does not include terms and conditions about remuneration.

(3) For the purposes of this paragraph, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

Right to return

6 (1) An employee who returns to work after a period of emergency volunteering leave is entitled to return from leave to the job in which they were employed before the absence.

(2) The right to return under this paragraph is a right to return—

- (a) with the employee's seniority, pension and similar rights as they would have been if the employee had not been absent, and
- (b) on terms and conditions no less favourable than those which would have applied if the employee had not been absent.

Pension rights

7 (1) If an employment-related benefit scheme does not include an emergency volunteering rule, it is to be treated as including one.

(2) An emergency volunteering rule is a provision that has the effect set out in sub-paragraphs (3) and (4).

(3) If a relevant term does not treat time when a worker is on emergency volunteering leave as it treats time when they are not, the term is modified so as to treat time when they are on emergency volunteering leave as time when they are not.

(4) If a term confers a relevant discretion capable of being exercised so that time when a worker is on emergency volunteering leave is treated differently from time when they are not, the term is modified so as not to allow the discretion to be exercised in that way.

(5) A term is relevant if it is—

- (a) a term relating to membership of the scheme,
- (b) a term relating to the accrual of rights under the scheme, or
- (c) a term providing for the determination of the amount of a benefit payable under the scheme.

(6) A discretion is relevant if its exercise is capable of affecting—

- (a) membership of the scheme,
- (b) the accrual of rights under the scheme, or
- (c) the determination of the amount of a benefit payable under the scheme.

(7) This paragraph does not require the worker's contributions to the scheme in respect of time when they are on emergency volunteering leave to be determined otherwise than by reference to the amount they are paid by the employer in respect of that time.

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(8) “Employment-related benefit scheme”—

- (a) in relation to England and Wales and Scotland, has the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989;
- (b) in relation to Northern Ireland, has the meaning given by paragraph 7 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)).

PART 3

MODIFICATIONS OF EMPLOYMENT RIGHTS ACT 1996

8 The Employment Rights Act 1996 (“the 1996 Act”) has effect in accordance with this Part of this Schedule.

9 The 1996 Act has effect as if after section 47G there were inserted—

“47H Emergency volunteering leave

(1) A worker has the right not to be subjected to a detriment by any act, or any deliberate failure to act, by their employer on the grounds that—

- (a) the worker took, sought to take, or made use of the benefits of, emergency volunteering leave under Schedule 7 to the Coronavirus Act 2020, or
- (b) the employer believed that the worker was likely to take emergency volunteering leave under that Schedule.

(2) A worker makes use of the benefits of emergency volunteering leave if, during a period of emergency volunteering leave, the worker benefits from any provision of Part 2 of Schedule 7 to the Coronavirus Act 2020.

(3) Subsection (1) does not apply where the worker is an employee and the detriment in question amounts to dismissal within the meaning of Part 10.”

10 The 1996 Act has effect as if in section 48 (complaints to employment tribunals)—
(a) after subsection (1B) there were inserted—

“(1C) A worker may present a complaint to an employment tribunal that they have been subjected to a detriment in contravention of section 47H.”;

(b) in subsection (2), for “or (1B)” there were substituted “, (1B) or (1C) ”.

11 The 1996 Act has effect as if in section 49 (remedies)—

- (a) in subsection (1), for “or (1B)” there were substituted “, (1B) or (1C) ”;
- (b) after subsection (7) there were inserted—

“(8) Where—

- (a) the complaint is made under section 48(1C),
 - (b) the detriment to which the worker is subjected is the termination of their worker's contract, and
 - (c) that contract is not a contract of employment,
- any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 10 if the worker had been

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- an employee and had been dismissed for the reason specified in section 104H.”
- 12 The 1996 Act has effect as if in section 88 (pay during period of notice: employments with normal working hours), in subsection (1)(c), after “paternity leave” there were inserted “ or emergency volunteering leave under Schedule 7 to the Coronavirus Act 2020 ”.
- 13 The 1996 Act has effect as if in section 89 (pay during period of notice: employments without normal working hours), in subsection (3)(b), after “paternity leave” there were inserted “ or emergency volunteering leave under Schedule 7 to the Coronavirus Act 2020 ”.
- 14 The 1996 Act has effect as if after section 104G there were inserted—

“104H Emergency volunteering leave

- (1) An employee who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
- (a) the employee took, sought to take, or made use of the benefits of, emergency volunteering leave under Schedule 7 to the Coronavirus Act 2020, or
- (b) the employer believed that the employee was likely to take emergency volunteering leave under that Schedule.
- (2) An employee makes use of the benefits of emergency volunteering leave if, during a period of emergency volunteering leave, the worker benefits from any provision of Part 2 of Schedule 7 to the Coronavirus Act 2020.”
- 15 The 1996 Act has effect as if in section 105 (redundancy), after subsection (7BB) there were inserted—
- “(7BC) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 104H.”
- 16 The 1996 Act has effect as if in section 108(3) (exceptions to qualifying period of employment for unfair dismissal), after paragraph (gm) there were inserted—
- “(gn) section 104H applies,”.
- 17 The 1996 Act has effect as if in section 124(1A) (exceptions to limits on compensation), after “103A,” there were inserted “ 104H, ”.
- 18 The 1996 Act has effect as if in section 203(1)(a) (restrictions on contracting out), after “this Act” there were inserted “ or Schedule 7 to the Coronavirus Act 2020 ”.

PART 4

MODIFICATIONS OF EMPLOYMENT RIGHTS (NORTHERN IRELAND) ORDER 1996

- 19 The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)) (“the 1996 Order”) has effect in accordance with this Part of this Schedule.
- 20 The 1996 Order has effect as if after Article 70F there were inserted—

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“Emergency volunteering leave

70G(1) A worker has the right not to be subjected to a detriment by any act, or any deliberate failure to act, by their employer on the grounds that—

- (a) the worker took, sought to take, or made use of the benefits of, emergency volunteering leave under Schedule 7 to the Coronavirus Act 2020, or
- (b) the employer believed that the worker was likely to take emergency volunteering leave under that Schedule.

(2) A worker makes use of the benefits of emergency volunteering leave if, during a period of emergency volunteering leave, the worker benefits from any provision of Part 2 of Schedule 7 to the Coronavirus Act 2020.

(3) Paragraph (1) does not apply where the worker is an employee and the detriment in question amounts to dismissal within the meaning of Part 11.”

21 The 1996 Order has effect as if in Article 71 (complaints to industrial tribunals)—

- (a) after paragraph (1B) there were inserted—

“(1C) A worker may present a complaint to an industrial tribunal that they have been subjected to a detriment in contravention of Article 70G.”;

- (b) in paragraph (2), for “or (1B)” there were substituted “, (1B) or (1C) ”.

22 The 1996 Order has effect as if in Article 72 (remedies)—

- (a) in paragraph (1), for “or (1B)” there were substituted “, (1B) or (1C) ”;
- (b) after paragraph (7) there were inserted—

“(8) Where—

- (a) the complaint is made under Article 71(1C),
- (b) the detriment to which the worker is subjected is the termination of their worker's contract, and
- (c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 11 if the worker had been an employee and had been dismissed for the reason specified in Article 135G.”

23 The 1996 Order has effect as if in Article 120 (pay during period of notice: employments with normal working hours), in paragraph (1)(c), after “paternity leave” there were inserted “ or emergency volunteering leave under Schedule 7 to the Coronavirus Act 2020 ”.

24 The 1996 Order has effect as if in Article 121 (pay during period of notice: employments without normal working hours), in paragraph (3)(b), after “paternity leave” there were inserted “ or emergency volunteering leave under Schedule 7 to the Coronavirus Act 2020 ”.

25 The 1996 Order has effect as if after Article 135F there were inserted—

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“Emergency volunteering leave

135G) An employee who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

- (a) the employee took, sought to take, or made use of the benefits of, emergency volunteering leave under Schedule 7 to the Coronavirus Act 2020, or
- (b) the employer believed that the employee was likely to take emergency volunteering leave under that Schedule.

(2) An employee makes use of the benefits of emergency volunteering leave if, during a period of emergency volunteering leave, the worker benefits from any provision of Part 2 of Schedule 7 to the Coronavirus Act 2020.”

26 The 1996 Order has effect as if in Article 137 (redundancy)—

- (a) in paragraph (1)(c), for “(7M)” there were substituted “ (7N) ”;
- (b) after paragraph (7M) there were inserted—

“(7N) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 135G.”

27 The 1996 Order has effect as if in Article 140(3) (exceptions to qualifying period of employment for unfair dismissal), after sub-paragraph (fk) there were inserted—

“(fl) Article 135G applies.”.

28 The 1996 Order has effect as if in Article 158(1A) (exceptions to limits on compensation), after “135F,” there were inserted “ 135G, ”.

29 The 1996 Order has effect as if in Article 245(1)(a) (restrictions on contracting out), after “this Order” there were inserted “ or Schedule 7 to the Coronavirus Act 2020 ”.

PART 5

GENERAL

Application of this Schedule to agency workers

30 (1) This paragraph applies in relation to a worker who is supplied by a person (an “agent”) to do work for another (a “principal”) under a contract or other arrangements made between the agent and the principal.

(2) Where the worker gives notice and a certificate under paragraph 1(2) to the employer, the employer must as soon as reasonably practicable provide copies of them—

- (a) if the employer is the agent, to any principals to whom the worker was to be supplied during the period specified in the certificate,
- (b) if the employer is a principal, to the agent, and

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- (c) if the employer is neither the agent nor a principal, to the agent and any principals to whom the worker was to be supplied during the period specified in the certificate.
- (3) For the purposes of the provisions mentioned in sub-paragraph (4) references to the worker's employer are to be read as including—
 - (a) the agent, and
 - (b) any principals to whom the worker was to be supplied during the period specified in the certificate,(where they would not otherwise be the worker's employer).
- (4) The provisions referred to in sub-paragraph (3) are—
 - (a) in paragraph 9, section 47H (right not to be subjected to detriment by employer: Great Britain);
 - (b) in paragraph 20, Article 70G (right not to be subjected to detriment by employer: Northern Ireland).

Interpretation

- 31 (1) This paragraph applies for the interpretation of this Schedule.
- (2) In relation to England and Wales and Scotland, the following terms have the meaning given by section 230 of the Employment Rights Act 1996—
“contract of employment”,
“employed”,
“employee”,
“employer”,
“employment”,
“worker”,
“worker's contract”.
- (3) In relation to Northern Ireland, the following terms have the meaning given by Article 3 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))—
“contract of employment”,
“employed”,
“employee”,
“employer”,
“employment”,
“worker”,
“worker's contract”.
- (4) “Emergency volunteering leave” has the meaning given by paragraph 1.
- (5) “Health or social care” has the meaning given by section 9 of the Health and Social Care Act 2008.
- (6) “Week” means any period of 7 consecutive days.
- (7) “Working day” means a day other than—
 - (a) a Saturday or a Sunday,
 - (b) Christmas Day or Good Friday, or

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- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

Regulations

- 32 A power to make regulations under this Schedule includes power to make consequential, supplementary, incidental, transitional or saving provision.
- 33 (1) Regulations made by the Secretary of State under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations made by the Secretary of State under this Schedule is subject to annulment in pursuance of a resolution of either House of Parliament.
- 34 (1) Regulations made by the Department for the Economy in Northern Ireland under this Schedule may contain only provision which—
- (a) would be within the legislative competence of the Northern Ireland Assembly, and
 - (b) would not require the consent of the Secretary of State, if it were contained in an Act of that Assembly.
- (2) The power of the Department for the Economy in Northern Ireland to make regulations under this Schedule is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)) (and not by statutory instrument).
- (3) Regulations under this Schedule made by the Department for the Economy in Northern Ireland are subject to negative resolution within the meaning given by section 41(6) of the Interpretation Act (Northern Ireland) 1954.

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