

The Shops
(Sunday Trading & c.)
(NI) Order 1997

EMPLOYMENT RIGHTS

FOR SHOP WORKERS

Department for Employment and Learning
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Foreword

Please note that this leaflet gives general guidance only and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described.

Further information can be obtained from the Labour Relations Agency (LRA) - for the addresses of its two offices - see Annex 3.

The contents of this leaflet apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout.

Any reference throughout this leaflet to JobCentres includes Jobs and Benefits Offices and the One Centre.

Upon request, consideration may be given to making this leaflet available in alternative formats and in other languages, for people who are not proficient in English.

Employment rights for shop workers

THE PROVISIONS OF THE SHOPS (SUNDAY TRADING & c) (NI) ORDER 1997 CAME INTO OPERATION ON 4 DECEMBER 1997

The Order allows small shops to open freely on Sunday. Larger shops may open at any time, between 1.00 pm and 6.00 pm. There are exemptions from this restricted period for certain types of large shop.

The Rights

The Order gives all shop workers in Northern Ireland (except those employed to work only on Sunday) the following new rights:-

the right not to be dismissed for refusing to work on Sunday;

the right not to be selected for redundancy for refusing to work on Sunday; and

the right not to suffer any other detriment for refusing to work on Sunday.

NOTE: *Detriment is not defined in the Order but would include exclusion from a general pay rise or bonus and discrimination in promotion or training opportunities.*

How the provisions work

Who qualifies?

The provisions apply to those who are employed to work in or about a shop in Northern Ireland. The new rights extend to all shop workers whose contracts of employment require them, or who are asked, to do shop work on a Sunday on which the shop is open. They apply irrespective of age, length of service or hours of work. However, they do not apply to those who work only on Sunday and not on other days.

How do they qualify?

Some shop workers qualify for these rights automatically. There is nothing they need do to become eligible for them. They can simply tell their employer that they do not wish to work on Sunday. Such workers can only give up their right not to work on Sunday by giving their employer a signed and dated written **opting-in notice**, stating that they wish to work on Sunday or that they do not object to working on Sunday. They must then enter into an express agreement with their employer saying what shop work on Sunday or on a particular Sunday they are agreeing to do.

Other shop workers will be able to **opt-out** of Sunday working at any time but they will need to give their employer a written **opt-out** notice and then serve a three month notice period. During the three month period they will still be obliged to do the

Sunday work their contract provides for if their employer requires them to. The right not to work on Sunday applies as from the end of the three month period.

Who qualifies automatically?

All shop workers who were employed when the Order came into operation, even those who had previously agreed to a contract requiring them to work on Sunday.

Any shop workers recruited after the law changed and whose contract of employment does not require Sunday working but whose employer asks them to work on Sunday.

Who needs to serve a three month notice period?

Shop workers who enter into a contract requiring Sunday working after the law changes, for example all new recruits who agree to do shop work on Sunday.

How to opt out of Sunday shop work

Shop workers who enter into a contract which requires Sunday working after the law changes but later decide that they no longer wish to do it have the right to **opt-out** of Sunday working. To do this they must simply give their employer a signed and dated written notice saying that they object to Sunday working. They do not have to give any reason. They must then serve a three month notice period. During this period they will still be obliged to do the Sunday shop work their contract of employment provides for if their employer requires them to. However, the Order provides that shop workers may not be dismissed or subjected to any other detriment by their employer during the notice period for giving an opting-out notice. Once the three month notice period has ended, the shop worker has the right not to do Sunday shop work.

The right to **opt-out** is a continuing one. So any shop worker who **opts-in** to Sunday working will have the right to **opt-out** again.

How the new rights are enforced

Shop workers who consider their rights have been infringed can make a complaint to an industrial tribunal. Application forms are available from any local JobCentre or the Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET). If an industrial tribunal upholds a complaint, it will make an order either for compensation or for re-employment. Alternatively, such shop workers may first accept help from the Labour Relations Agency (LRA), which may arrange for one of its conciliation officers to attempt to get the employer and employee to reach an agreement. The LRA will offer its assistance automatically once a complaint is registered with OITFET. More detailed information on these procedures is contained in the booklets "**Unfairly dismissed?**"(ER13), "**Rights to Notice and Reasons for Dismissal**" (ER15) and "**Dismissal: Fair and Unfair – a guide for employers**" (ER 18). These booklets can be obtained free of charge from any local JobCentre or can be accessed at the DEL website – www.delni.gov.uk/er.

Explanatory statement

The Shops (Sunday Trading & c) (NI) Order 1997 requires employers to give every shop worker who enters into a contractual agreement to work on Sunday after the Order comes into operation a written explanatory statement setting out their right to **opt-out**. If an employer does not issue this statement within two months of the worker entering into such a contractual agreement, the **opt-out** notice period is reduced from three months to one month. The prescribed form of the explanatory statement is set out at Annex 1.

ANNEX 1

Statutory Rights in Relation to Sunday Shop Work

You have become employed as a shop worker and are or can be required under your contract of employment to do the Sunday work your contract provides for.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to work in or about a shop on any Sunday on which the shop is open once three months have passed from the date on which you gave the notice.

Your notice must:

be in writing;

be signed and dated by you; and

say that you object to Sunday working.

For three months after you give notice, your employer can still require you to do all the Sunday work your contract provides for. After the three month period has ended, you have the right to complain to an industrial tribunal if, because of your refusal to work on Sundays on which the shop is open, your employer:

dismisses you; or

does something else detrimental to you, for example failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to work on a Sunday or that you do not object to Sunday working and then agreeing with your employer to work on Sundays or on a particular Sunday.

ANNEX 2

Your questions answered

Q Before the law changed, I agreed a new contract with my employer requiring me to work on Sundays. Am I bound by them?

A No. All workers employed when the law changed are eligible for the new rights, even if they entered into a contractual agreement to work on Sundays before then. You therefore have the right not to work on Sundays. You can only give up the right by giving your employer a signed and dated written "opting in notice" saying that you wish to work on Sunday or that you do not object to Sunday working. You would then need to enter into an agreement with your employer saying what shop work you agreed to do on Sundays.

Q I started my shop work job after the law changed and although I agreed to work on Sundays I have now decided that I no longer wish to do so. What can I do?

A You should first give your employer a signed and dated written notice saying that you object to Sunday working. You must then serve a three month notice period, during which you must work whatever Sundays your contract provides for if your employer wants you to. After this you will be under no further obligation to work on Sundays.

Q But supposing my employer sacks me during the notice period?

A The Order protects a shop worker dismissed or subjected to detrimental action during the notice period for giving an "opting out" notice. You would have the right to claim unfair dismissal at an industrial tribunal.

Q My friend started working in the shop where I work after the law changed and although his contract does not mention Sunday shop working he is being pressured to work on Sundays. Should he also hand in an opting out notice?

A No. If a shop worker employed after the law changed has a contract of employment which does not require Sunday working, he has the rights immediately and can simply tell his employer he does not wish to work on Sundays. There is no need to give any notice in writing or to serve a notice period.

Q As a result of opting-out of Sunday work, I am working fewer hours per week. Am I entitled to an increase in my weekday working hours?

A No. Your employer is not required to provide you with work on weekdays in excess of the hours normally worked on weekdays before you ceased to work on Sunday.

ANNEX 3

Useful Addresses

Employment Rights Branch
Department for Employment and Learning
Room 203
Adelaide House
Adelaide Street
Belfast
BT2 8FD

Tel: (028) 9025 7580
Fax: (028) 9025 7555

Email: erbooklets@delni.gov.uk
Website: www.delni.gov.uk/er

Labour Relations Agency
Head Office
2-8 Gordon Street
Belfast
BT1 2LG

Tel: (028) 9032 1442
Fax: (028) 9033 0827

Email: info@lra.org.uk
Website: www.lra.org.uk

Labour Relations Agency
Regional Office
1-3 Guildhall Street
Londonderry
BT48 6BJ

Email: info@lra.org.uk
Website: www.lra.org.uk

Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET)

Long Bridge House
20-24 Waring Street
Belfast
BT1 2EB

Tel: (028) 9032 7666

Fax: (028) 9023 0184

Email: oitfetmailbox@delni.gov.uk

Website: www.industrialfairemploymenttribunalsni.gov.uk

Copies of this leaflet can be accessed at the DEL website - www.delni.gov.uk/er

