

Statutory Document No. 2020/0212

*Emergency Powers Act 1936*

EMERGENCY POWERS (CORONAVIRUS) (VOLUNTEERS) REGULATIONS 2020

Laid before Tynwald: 3 April 2020
Approved by Tynwald: NOT MOVED
Coming into Operation: in accordance with regulation 2

The Governor in Council, by Order¹, makes the following Regulations under section 4 of the Emergency Powers Act 1936.

PART 1

INTRODUCTORY

1 Title

These Regulations are the Emergency Powers (Coronavirus) (Volunteers) Regulations 2020.

2 Commencement

These Regulations come into operation immediately after they are made² and continue to have effect throughout the Coronavirus Proclamation period.

3 Interpretation

For the purposes of regulation 2 —

“**Coronavirus**” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

¹ Section 4(1) specifies that “Where a proclamation of emergency has been made, and so long as such proclamation is in force, it shall be lawful for the Governor in Council, by Order, to make regulations...”.

² By virtue of section 4(2) of the Emergency Powers Act 1936, these Regulations made by Order of the Governor in Council must be laid before Tynwald within 7 days of being made and only continue in force beyond 7 days of being so laid if Tynwald passes a resolution to that effect.

“the **Coronavirus Proclamation period**” means the period for which the Proclamation of Emergency dated 16 March 2020³ is in operation.

PART 2

GENERAL

4 Purpose

These Regulations provide for the terms and conditions on which volunteering leave may be taken and (among other things) the terms and conditions of employment applying during such leave.

5 Conditions

- (1) In these Regulations, an “**emergency volunteer**” is a person who meets the following three conditions.
- (2) The first condition is that an appropriate authority certifies that the person has been approved by the authority as an emergency health or social care volunteer.
- (3) The second condition is that an appropriate authority certifies that the person undertook a voluntary role in health or social care for a period for which emergency volunteering leave could have been taken in accordance with regulation 8 (whether or not the person actually took emergency volunteering leave).
- (4) The third condition is that in the case of a worker who takes emergency volunteering leave, the worker complies with the conditions in regulation 6 in relation to the voluntary role.

6 Entitlement to emergency volunteering leave

- (1) A worker is entitled to be absent from work on leave (“emergency volunteering leave”) if three conditions are met.

This is subject to regulation 7 (exceptions).

- (2) The first condition is that an appropriate authority certifies that—
 - (a) the worker has been approved by the authority as an emergency health or social care volunteer, and
 - (b) there is a voluntary role in health or social care available to the worker for the period or periods specified in the certificate (which must be a period or periods for which emergency volunteering leave may be taken by virtue of paragraph 8).
- (3) The second condition is that the absence from work on leave—

³ SD 2020/0162

- (a) is for the purpose of undertaking the voluntary role in health or social care specified in the certificate, and
 - (b) is for a period specified in the certificate.
- (4) The third condition is that, no later than 2 working days before the first day of the worker's absence, the worker—
- (a) notifies their employer in writing of their intention to be absent from work on leave, the purpose of the absence and the period of the absence, and
 - (b) provides their employer with a copy of the appropriate authority's certificate.

7 Exceptions to entitlement

- (1) Regulation 6 does not apply in the case of a person —
- (a) employed by an undertaking which has a headcount of staff of less than 10;
 - (b) who is a member of emergency services;
 - (c) employed as the master or the member of the crew of a ship or other vessel, or
 - (d) specified by the Cabinet Office in a notice.
- (2) A notice referred to in paragraph (1)(d) must be published on www.gov.im and in such other form and at such times as the Cabinet Office considers appropriate.

8 Duration of emergency volunteering leave

Emergency volunteering leave may be taken only for a period of—

- (a) two consecutive weeks,
- (b) three consecutive weeks, or
- (c) four consecutive weeks.

9 Application of terms and conditions of employment

- (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
 - (b) bound by any obligations arising under those terms and conditions (except in so far as they are inconsistent with subparagraph (a)).
- (2) In paragraph (1)(a) “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 regulation, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

10 Right to return

- (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 regulation 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.
- (3) Nothing in this regulation imposes a requirement in relation to an occupational pension scheme which exceeds the requirements of regulation 11.

11 Pension rights

- (1) If an occupational pension 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 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 regulation 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 in respect of that time.

PART 3

PROTECTION FROM DETRIMENT: MODIFICATIONS OF EMPLOYMENT ACT 2006

12 Modifications: general

The Employment Act 2006 (“the 2006 Act”) has effect in accordance with this Part.

13 Modification: emergency volunteering leave

The 2006 Act has effect as if after section 70 there were inserted—

70A 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 the worker took, sought to take, or made use of the benefits of, emergency volunteering leave under the Emergency Powers (Coronavirus) (Volunteers) Regulations 2020.
- (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 the Emergency Powers (Coronavirus) (Volunteers) Regulations 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.
- (4) In this section, “worker” and “employer” have the meaning given by regulation 20 of the Emergency Powers (Coronavirus) (Volunteers) Regulations 2020. **22**.

14 Modification of section 71

The 2006 Act has effect as if in section 71 (complaints to Tribunals) after subsection (1) there were inserted—

(2A) A worker may present a complaint to the Tribunal that they have been subjected to a detriment in contravention of section 70A.

15 Modification: unfair dismissal

The 2006 Act has effect as if after section 124B there were inserted—

124C 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 the Emergency Powers (Coronavirus) (Volunteers) Regulations 2020, or
 - (b) the employer believed that the employee was likely to take emergency volunteering leave under those regulations.
- (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 of the terms and conditions of employment preserved by any provision of the Emergency Powers (Coronavirus) (Volunteers) Regulations 2020.

16 Modification of section 128

The 2006 Act has effect as if in section 128 (dismissal on the grounds of redundancy), after subsection (11C) there were inserted—

(11D) 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 124C.

17 Modification of section 132

The 2006 Act has effect as if in section 132(3) (exceptions to qualifying period of employment for unfair dismissal), after paragraph (kb) there were inserted—

(kc) section 124C applies.

PART 4

AGENCY WORKERS

18 Agency workers

- (1) This regulation applies to an agency worker (W) who —

- (a) is supplied by an agent to do work for another (“the principal”) under a contract or other arrangement made between the agent and the principal,
 - (b) is not a worker as respects that work, because of the absence of a worker’s contract between W and the agent or the principal, and
 - (c) is not a party to a contract under which W undertakes to do work for another party to the contract who under its terms is a client or customer of any profession or business carried on by W.
- (2) These Regulations have effect as if —
- (a) there were a worker’s contract for the doing of the work by W and which is not a contract of employment, and
 - (b) that contract was made between W and —
 - (i) whichever of the agent and the principal is responsible for paying W in respect of the work, or
 - (ii) if neither the agent nor the principal is responsible for doing so, whichever of them pays W in respect of the work.
- (3) But for the purposes of section 70A, references to an employer in relation to W include both the agent and the principal.
- (4) Where by virtue of this regulation W gives the principal notice and a certificate under regulation 6(2), the principal must as soon as reasonably practicable provide copies to the agent.

PART 5

COMPENSATION

19 Compensation for emergency volunteers

- (1) The Council of Ministers must make arrangements for the payment of compensation to emergency volunteers.
- (2) An emergency volunteer is entitled, in respect of undertaking a voluntary role, to receive payments by way of compensation—
 - (a) for loss of earnings;
 - (b) for travelling and subsistence.

This is subject to arrangements made by the Council of Ministers.

- (3) But a person is entitled to receive payments by way of allowance for loss of earnings only if, in consequence of undertaking the voluntary role, the person has suffered a loss of earnings that the person would otherwise not have suffered.
- (4) The arrangements made under paragraph (1) may include provision—

- (a) about the procedure for making a claim;
 - (b) about how the amount a person is entitled to claim is to be determined;
 - (c) about the manner in which payments are to be made by the Council of Ministers;
 - (d) specifying limits on the amount that a person is entitled to claim.
- (5) Sums required for the payment of compensation in accordance with subsection (1) are to come out of money provided by Tynwald.
- (6) The reference in paragraph (2)(b) to payments by way of compensation for subsistence includes a reference to vouchers and other benefits which may be used to pay for subsistence, whether or not their use is subject to any limitations.
- (7) The Council of Ministers must publicise the arrangements by publishing them on www.gov.im and in such other form and at such times as it considers appropriate.

PART 6

INTERPRETATION

20 Interpretation

- (1) In these Regulations —
- “**appropriate authority**” means the Department of Health and Social Care;
- “**emergency volunteering leave**” means leave under regulation 6;
- “**occupational pension scheme**” has the meaning given in section 1 of the Pension Schemes Act 1993 (of Parliament) as applied to the Island by the Pension Schemes Act 1995;
- “**week**” means any period of 7 consecutive days.
- “**working day**” means a day other than—
- (a) a Saturday or a Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Bank Holidays Act 1989.
- (2) The following terms have the meaning given by section 173 of the Employment Act 2006—
- “**contract of employment**”,
- “**employee**”,
- “**employer**”,
- “**employment**”,

“worker”.

- (3) For the purposes of these Regulations, —
- (a) “**health care**” includes all forms of health care provided for individuals, whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition;
 - (b) “**social care**” includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance; and
 - (c) “**health or social care**” means health care or social care.

MADE AT 10.30 ON 31ST MARCH 2020

W GREENHOW
Chief Secretary

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations are made by the Governor in Council under section 4 of the Emergency Powers Act 1936 and following a proclamation of a state of emergency under section 3 of that Act.

These Regulations are made for the purpose of securing the essentials of life to the community of the Island and for the protection of the economy of the Island.

These Regulations deal with the terms and conditions on which volunteering leave may be taken and (among other things) the terms and conditions of employment applying during such leave (see Part 2). Part 3 modifies the law relating to employment rights to ensure that no persons suffers a detriment in respect of such rights as a result of volunteering. Part 4 applies the Regulations to agency workers who are not otherwise workers, Part 5 provides for the establishment of a scheme to compensate volunteers for loss of earnings and travel and subsistence etc. Part 6 defines terms and concepts used in the Regulations.