

*Status: Point in time view as at 03/04/2011. This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Act (Northern Ireland) 2011. (See end of Document for details)*



# Employment Act (Northern Ireland) 2011

2011 CHAPTER 13

**N.I.**

An Act to make provision about the procedures for the resolution of employment disputes and the procedures of industrial tribunals and the Fair Employment Tribunal; to make provision in relation to time off for study or training; and for connected purpose. [22nd March 2011]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

## *Dispute resolution procedures*

### **Repeal of statutory grievance procedures** **N.I.**

1.—(1) In the Employment (Northern Ireland) Order 2003 (NI 15) the following provisions (which relate to the statutory grievance procedures) are repealed—

- (a) Articles 19 and 20;
- (b) Part 2 of Schedule 1.

(2) Schedule 1 (which contains amendments consequential on subsection (1)) has effect.

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**Commencement Information**

- I1** S. 1 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

**Statutory dispute resolution procedures: effect on contracts of employment** **N.I.**

2 Article 16 of the Employment (Northern Ireland) Order 2003 (which provides for every contract of employment to have effect to require the employer and employee to comply with statutory dispute resolution procedures) is repealed.

**Commencement Information**

- I2** S. 2 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

**Statutory dispute resolution procedures: consequential adjustment of time limits** **N.I.**

3 Articles 21 and 22 of the Employment (Northern Ireland) Order 2003 (which make provision about time limits for beginning proceedings where a statutory dispute resolution procedure applies) are repealed.

**Commencement Information**

- I3** S. 3 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

**Non-compliance with statutory Codes of Practice** **N.I.**

4.—(1) The Industrial Relations (Northern Ireland) Order 1992 (NI 5) is amended as follows.

(2) After Article 90 insert—

**“Effect of failure to comply with Code: adjustment of awards**

**90AA.**—(1) This Article applies to proceedings before—

- (a) an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4A;

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- (b) the Fair Employment Tribunal relating to a claim by an employee under Article 38 of the Fair Employment (Northern Ireland) Order 1998;

and references in this Article to “the tribunal” are to be read accordingly.

(2) If, in the case of proceedings to which this Article applies, it appears to the tribunal that—

- (a) the claim to which the proceedings relate concerns a matter—
  - (i) to which a relevant Code of Practice applies, and
  - (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employer has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 50%.

(3) If, in the case of proceedings to which this Article applies, it appears to the tribunal that—

- (a) the claim to which the proceedings relate concerns a matter—
  - (i) to which a relevant Code of Practice applies, and
  - (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employee has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 50%.

(4) In this Article—

“relevant Code of Practice” means a Code of Practice issued under Article 90 which relates exclusively or primarily to procedure for the resolution of disputes;

“statutory dispute resolution procedure” means a procedure set out in Part 1 of Schedule 1 to the Employment (Northern Ireland) Order 2003.

(5) Where an award falls to be adjusted under this Article and under Article 27 or 28 of the Employment (Northern Ireland) Order 2003, the adjustment under this Article shall be made before the adjustment under that Article.

(6) The Department may by order amend Schedule 4A for the purpose of—

- (a) adding a jurisdiction to the list in that Schedule, or
- (b) removing a jurisdiction from that list.

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(7) No order shall be made under paragraph (6) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.”

(3) In Article 107(2) after “90(14)” insert “, 90AA(6)”.

(4) After Schedule 4 insert as Schedule 4A the Schedule set out in Schedule 2 to this Act.

#### Commencement Information

**I4** S. 4 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### *Procedure: industrial tribunals*

#### **Determination of industrial tribunal proceedings without hearing** **N.I.**

**5** In the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18), in Article 9 (industrial tribunal procedure regulations), after paragraph (3A) insert—

“(3AA) Industrial tribunal procedure regulations under paragraph (3A) may only authorise the determination of proceedings without any hearing in circumstances where—

- (a) all the parties to the proceedings consent in writing to the determination without a hearing, or
- (b) the person (or, where more than one, each of the persons) against whom the proceedings are brought—
  - (i) has presented no response in the proceedings, or
  - (ii) does not contest the case.

(3AB) For the purposes of paragraph (3AA)(b), a person does not present a response in the proceedings if he presents a response but, in accordance with provision made by the regulations, it is not accepted.”

#### Commencement Information

**I5** S. 5 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### **Restriction of publicity** **N.I.**

**6.**—(1) Article 13 of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) is amended as follows.

(2) In the heading to the Article omit the words “in cases involving sexual misconduct”.

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(3) For paragraph (1) substitute—

“(1) Industrial tribunal procedure regulations may include provision for cases to which this paragraph applies enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

(1A) Paragraph (1) applies to cases—

- (a) involving allegations of sexual misconduct;
- (b) where the disclosure of identifying matter would be likely to cause—
  - (i) an individual (whether a party to the proceedings or not) to be subjected to harassment;
  - (ii) such an individual, or any property of such an individual, to be placed at risk of injury or damage; or
- (c) where, in the opinion of the tribunal, the interests of justice otherwise require.

(1B) Industrial tribunal procedure regulations may include provision, for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation.”

(4) In paragraph (4) in the definition of “identifying matter” for “him as a person affected by, or as the person making, the allegation” substitute “ a party to the proceedings in question or such other persons (if any) as may be named in the restricted reporting order ”.

**Commencement Information**

- I6** S. 6 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

**Enforcement of sums payable** **N.I.**

7 In Article 17(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) for the words from “shall, if a county court so orders,” to the end substitute “ shall be enforceable as if it were payable under an order of the county court. ”.

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#### Commencement Information

- I7** S. 7 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Conciliation before bringing of proceedings **N.I.**

**8.**—(1) In the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18), Article 20 (conciliation) is amended as follows.

(2) In paragraph (3) for the words from “shall act” to the end substitute “may endeavour to promote a settlement between the parties without proceedings being instituted.”.

(3) For paragraph (5) substitute—

“(5) Where the Agency acts pursuant to paragraph (3) in a case where the person claiming as specified in sub-paragraph (a) of that paragraph has ceased to be employed by the employer and the proceedings which he claims could be brought by him are proceedings under Article 145 of the Employment Rights Order, the Agency may in particular—

- (a) seek to promote the reinstatement or re-engagement of that person by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the Agency to be equitable, or
- (b) where the person does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to that person.”.

#### Commencement Information

- I8** S. 8 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Conciliation after bringing of proceedings **N.I.**

**9.**—(1) In the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18), in Article 20 (conciliation), paragraph (2A) is repealed.

(2) In that Order, in Article 21 (conciliation procedure), paragraph (2) is repealed.

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#### Commencement Information

- 19** S. 9 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

### Recovery of sums payable under compromises involving the Agency **N.I.**

**10** In the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) after Article 21 insert—

#### “Conciliation: recovery of sums payable under compromises

**21A.**—(1) Paragraphs (3) to (6) apply if—

- (a) the Agency—
  - (i) has taken action under Article 20 in a case, and
  - (ii) issues a certificate in writing stating that a compromise has been reached in the case, and
- (b) all of the terms of the compromise are set out—
  - (i) in a single relevant document, or
  - (ii) in a combination of two or more relevant documents.

(2) A document is a “relevant document” for the purposes of paragraph (1) if—

- (a) it is the certificate, or
- (b) it is a document that is referred to in the certificate or that is referred to in a document that is within this sub-paragraph.

(3) Any sum payable by a person under the terms of the compromise (a “compromise sum”) shall, subject to paragraphs (4) to (7), be recoverable as if the sum were payable under an order of the county court.

(4) A compromise sum is not recoverable under paragraph (3) if—

- (a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from him under the general law of contract, and
- (b) that declaration is made.

(5) If county court rules so provide, a compromise sum is not recoverable under paragraph (3) during the period—

- (a) beginning with the issue of the certificate, and
- (b) ending at such time as may be specified in, or determined under, county court rules.

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(6) If the terms of the compromise provide for the person to whom a compromise sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by him under paragraph (3) only if a county court so orders.

(7) Once an application has been made for a declaration under paragraph (4) in relation to a sum, no further reliance may be placed on paragraph (3) for the recovery of the sum while the application is pending.

(8) An application for a declaration under paragraph (4) may be made to an industrial tribunal or a county court.

(9) Industrial tribunal procedure regulations may (in particular) make provision as to the time within which an application to an industrial tribunal for a declaration under paragraph (4) is to be made.

(10) County court rules may make provision as to—

(a) the time within which an application to a county court for a declaration under paragraph (4) is to be made;

(b) when an application (whether made to a county court or an industrial tribunal) for a declaration under paragraph (4) is pending for the purposes of paragraph (7).

(11) Nothing in this Article shall be taken to prejudice any rights or remedies that a person has apart from this Article.

(12) In this Article “compromise” (except in the phrase “compromise sum”) means a settlement, or compromise, to avoid proceedings or bring proceedings to an end.”.

#### Commencement Information

**110** S. 10 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### *Procedure: Fair Employment Tribunal*

#### **Powers of Fair Employment Tribunal in relation to matters within jurisdiction of industrial tribunals N.I.**

**11.**—(1) Article 85 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21) is amended as follows.

(2) In paragraph (1) for sub-paragraphs (a) and (b) substitute—

“(a) a complaint could be made to an industrial tribunal by the complainant under any other statutory provision; or



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(b) such a complaint has been made, but the proceedings in the industrial tribunal in relation to that complaint have not been disposed of.”

(3) In paragraph (3)(b) after “following” insert “ (if otherwise relevant to the industrial tribunal proceedings) ”.

#### Commencement Information

**I11** S. 11 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Conciliation before bringing of proceedings **N.I.**

**12** In the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21), in Article 88(2) (conciliation) for the words from “paragraph (1)” to the end substitute “ the Agency may endeavour to promote a settlement between the parties without proceedings being instituted. ”.

#### Commencement Information

**I12** S. 12 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Conciliation after bringing of proceedings **N.I.**

**13** In the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21), in Article 88 (conciliation), paragraph (1A) is repealed.

#### Commencement Information

**I13** S. 13 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Recovery of sums payable under compromises involving the Agency **N.I.**

**14** In the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21), after Article 88 insert—

##### “Conciliation: recovery of sums payable under compromises

**88A.**—(1) Paragraphs (3) to (6) apply if—

(a) the Agency—

(i) has taken action under Article 88 in a case, and

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- (ii) issues a certificate in writing stating that a compromise has been reached in the case, and
- (b) all of the terms of the compromise are set out—
  - (i) in a single relevant document, or
  - (ii) in a combination of two or more relevant documents.
- (2) A document is a “relevant document” for the purposes of paragraph (1) if—
  - (a) it is the certificate, or
  - (b) it is a document that is referred to in the certificate or that is referred to in a document that is within this sub-paragraph.
- (3) Any sum payable by a person under the terms of the compromise (a “compromise sum”) shall, subject to paragraphs (4) to (7), be recoverable as if the sum were payable under an order of the Tribunal.
- (4) A compromise sum is not recoverable under paragraph (3) if—
  - (a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from him under the general law of contract, and
  - (b) that declaration is made.
- (5) If county court rules so provide, a compromise sum is not recoverable under paragraph (3) during the period—
  - (a) beginning with the issue of the certificate, and
  - (b) ending at such time as may be specified in, or determined under, county court rules.
- (6) If the terms of the compromise provide for the person to whom a compromise sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by him under paragraph (3) only if a county court so orders.
- (7) Once an application has been made for a declaration under paragraph (4) in relation to a sum, no further reliance may be placed on paragraph (3) for the recovery of the sum while the application is pending.
- (8) An application for a declaration under paragraph (4) may be made to the Tribunal or a county court.
- (9) Regulations under Article 84 may (in particular) make provision as to the time within which an application to the Tribunal for a declaration under paragraph (4) is to be made.
- (10) County court rules may make provision as to—
  - (a) the time within which an application to a county court for a declaration under paragraph (4) is to be made;

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(b) when an application (whether made to a county court or the Tribunal) for a declaration under paragraph (4) is pending for the purposes of paragraph (7).

(11) Nothing in this Article shall be taken to prejudice any rights or remedies that a person has apart from this Article.

(12) In this Article “compromise” (except in the phrase “compromise sum”) means a settlement, or compromise, to avoid proceedings or bring proceedings to an end.”.

#### Commencement Information

**I14** S. 14 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

PROSPECTIVE

#### *Time off for study or training*

#### **Time off for study or training** **N.I.**

**15.**—(1) In the Employment Rights (Northern Ireland) Order 1996 (NI 16) after Article 95 insert as Part 7A of that Order the provisions set out in Part 1 of Schedule 3 to this Act.

(2) Part 2 of Schedule 3 makes consequential amendments relating to the provisions inserted by subsection (1).

#### *Supplementary*

#### **Repeals** **N.I.**

**16** The statutory provisions set out in Schedule 4 are repealed to the extent specified in the second column of that Schedule.

#### Commencement Information

**I15** S. 16 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

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## Commencement **N.I.**

**17.—**(1) The preceding sections of this Act (and the Schedules) come into operation on such day or days as the Department for Employment and Learning may by order appoint.

(2) An order under subsection (1) may contain such transitional or saving provisions as that Department considers appropriate.

### Subordinate Legislation Made

- P1** [S. 17\(1\)](#) power partly exercised: 3.4.2011 appointed for specified provisions by [S.R. 2011/159, art. 2](#) (with transitional provisions and savings in [art. 3, Sch.](#))

## Short title **N.I.**

**18** This Act may be cited as the Employment Act (Northern Ireland) 2011.

## SCHEDULES

### SCHEDULE 1 **N.I.**

Section 1.

#### REPEAL OF STATUTORY GRIEVANCE PROCEDURES: CONSEQUENTIAL AMENDMENTS

1 The Employment (Northern Ireland) Order 2003 is amended as follows.

##### Commencement Information

**I16** Sch. 1 para. 1 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

2 In Article 15 for paragraph (1) substitute—

“(1) Schedule 1 (which sets out the statutory dismissal and disciplinary procedures) has effect.”.

##### Commencement Information

**I17** Sch. 1 para. 2 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

3 In Article 34(3) omit “16,” and “19, 20,”.

##### Commencement Information

**I18** Sch. 1 para. 3 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

4 In Schedule 1 in paragraph 11 for “above” substitute “ in Part 1 ”.

##### Commencement Information

**I19** Sch. 1 para. 4 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

5 In Schedule 1 in paragraph 14 omit “and (5)” and “and “grievance hearing””.

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**Commencement Information**

**I20** Sch. 1 para. 5 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

**6** In Schedule 1 omit paragraph 15.

**Commencement Information**

**I21** Sch. 1 para. 6 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

SCHEDULE 2 **N.I.**

Section 4.

SCHEDULE INSERTED AS SCHEDULE 4A TO THE  
INDUSTRIAL RELATIONS (NORTHERN IRELAND) ORDER 1992

**Commencement Information**

**I22** Sch. 2 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

**N.I.**

“SCHEDULE 4A **N.I.**

TRIBUNAL JURISDICTIONS TO WHICH ARTICLE 90AA APPLIES

Section 2 of the Equal Pay Act (Northern Ireland) 1970 (c. 32) (equality clauses)

Article 63 of the Sex Discrimination (Northern Ireland) Order 1976 (NI 15) (discrimination in the employment field)

Article 52 of the Race Relations (Northern Ireland) Order 1977 (NI 6) (discrimination in the employment field)

Paragraph 156 of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12) (detriment in relation to union recognition rights)

Section 17A of the Disability Discrimination Act 1995 (c. 50) (discrimination in the employment field)

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Article 55 of the Employment Rights (Northern Ireland) Order 1996 (NI 16) (unauthorised deductions and payments)

Article 71 of that Order (detriment in employment)

Article 74 of that Order (detriment in relation to union membership and activities)

Article 77A of that Order (inducements relating to union membership or activities)

Article 77B of that Order (inducements relating to collective bargaining)

Article 145 of that Order (unfair dismissal)

Article 198 of that Order (redundancy payments)

Section 24 of the National Minimum Wage Act 1998 (c. 39) (detriment in relation to national minimum wage)

The Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994 (SR 1994/308) (breach of employment contract and termination)

Regulation 30 of the Working Time Regulations (Northern Ireland) 1998 (SR 1998/386) (breach of regulations)

Regulation 32 of the Transnational Information and Consultation of Employees Regulations 1999 (SI 1999/3323) (detriment relating to European Works Councils)

Regulation 34 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (SR 2003/497) (discrimination in the employment field)

Regulation 45 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (SR 2004/417) (detriment in employment)

Regulation 33 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (SR 2005/47) (detriment in employment)

Paragraph 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations (Northern Ireland) 2006 (SR 2006/48) (detriment in employment)

Regulation 41 of the Employment Equality (Age) Regulations (Northern Ireland) 2006 (SR 2006/261) (discrimination in the employment field)

Regulation 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (SI 2006/2059) (detriment in relation to involvement in a European Cooperative Society)

Regulation 17 of the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (SR 2008/315) (breach of regulations).”

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PROSPECTIVE

SCHEDULE 3 **N.I.**

Section 15.

## TIME OFF FOR STUDY OR TRAINING

**PART 1** **N.I.**

## PROVISIONS INSERTED AS PART 7A OF THE EMPLOYMENT RIGHTS (NORTHERN IRELAND) ORDER 1996

**N.I.****“PART 7A** **N.I.**

## STUDY AND TRAINING

*Statutory right to make request in relation to study or training*

**95A.**—(1) A qualifying employee may make an application under this Article to his employer.

(2) An application under this Article (an “Article 95A application”) is an application that meets—

- (a) the conditions in paragraphs (3) to (5), and
- (b) any further conditions specified by the Department in regulations.

(3) The application must be made for the purpose of enabling the employee to undertake study or training (or both) within paragraph (4).

(4) Study or training is within this paragraph if its purpose is to improve—

- (a) the employee's effectiveness in the employer's business, and
- (b) the performance of the employer's business.

(5) The application must state that it is an application under this Article.

(6) An employee is a qualifying employee for the purposes of this Article if the employee—

- (a) satisfies any conditions about duration of employment specified by the Department in regulations, and
- (b) is not a person within paragraph (7).

(7) The following persons are within this paragraph—



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- (a) a person of compulsory school age;
  - (b) a person to whom Article 91A (right to time off for young person for study or training) applies;
  - (c) an agency worker;
  - (d) a person of a description specified by the Department in regulations.
- (8) Nothing in this Part prevents an employee and an employer from making any other arrangements in relation to study or training.

(9) In this Article—

“agency worker” means a worker supplied by a person (the “agent”) to do work for another person (the “principal”) under a contract or other arrangement between the agent and principal;

“compulsory school age” has the meaning given in Article 46 of the Education and Libraries (Northern Ireland) Order 1986.

*Article 95A application: supplementary*

**95B.**—(1) An Article 95A application may—

- (a) be made in relation to study or training of any description (subject to Article 95A(3) and (4) and regulations under Article 95A(2));
- (b) relate to more than one description of study or training.

(2) The study or training may (in particular) be study or training that (if undertaken)—

- (a) would be undertaken on the employer's premises or elsewhere (including at the employee's home);
- (b) would be undertaken by the employee while performing the duties of the employee's employment or separately;
- (c) would be provided or supervised by the employer or by someone else;
- (d) would be undertaken without supervision;
- (e) would be undertaken within or outside the United Kingdom.

(3) The study or training need not be intended to lead to the award of a qualification to the employee.

(4) An Article 95A application must—

- (a) give the following details of the proposed study or training—
  - (i) its subject matter;
  - (ii) where and when it would take place;
  - (iii) who would provide or supervise it;

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- (iv) what qualification (if any) it would lead to;
  - (b) explain how the employee thinks the proposed study or training would improve—
    - (i) the employee's effectiveness in the employer's business, and
    - (ii) the performance of the employer's business;
  - (c) contain information of any other description specified by the Department in regulations.
- (5) The Department may make regulations about—
- (a) the form of an Article 95A application;
  - (b) when an Article 95A application is to be taken to be received for the purposes of this Part.

*Employer's duties in relation to application*

**95C.**—(1) Paragraphs (4) to (7) apply if—

- (a) an employer receives an Article 95A application (the “current application”) from an employee, and
  - (b) during the relevant 12 month period the employer has not received another Article 95A application (an “earlier application”) from the employee.
- (2) The “relevant 12 month period” is the 12 month period ending with the day on which the employer receives the current application.
- (3) The Department may make regulations about circumstances in which, at an employee's request, an employer is to be required to ignore an earlier application for the purposes of paragraph (1).
- (4) The employer must deal with the application in accordance with regulations made by the Department.
- (5) The employer may refuse an Article 95A application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to the application.
- (6) The employer may refuse part of an Article 95A application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to that part.
- (7) The permissible grounds for refusal are—
- (a) that the proposed study or training to which the application, or the part in question, relates would not improve—
    - (i) the employee's effectiveness in the employer's business, or
    - (ii) the performance of the employer's business;

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- (b) the burden of additional costs;
- (c) detrimental effect on ability to meet customer demand;
- (d) inability to re-organise work among existing staff;
- (e) inability to recruit additional staff;
- (f) detrimental impact on quality;
- (g) detrimental impact on performance;
- (h) insufficiency of work during the periods the employee proposes to work;
- (i) planned structural changes;
- (j) any other grounds specified by the Department in regulations.

*Regulations about dealing with applications*

**95D.**—(1) Regulations under Article 95C(4) may, in particular, include provision—

- (a) for the employee to have a right to be accompanied by a person of a specified description when attending meetings held in relation to an Article 95A application in accordance with any such regulations;
- (b) for the postponement of such a meeting if the employee's companion under sub-paragraph (a) is not available to attend it;
- (c) in relation to companions under sub-paragraph (a), corresponding to Article 12(6) and (7) of the Employment Relations (Northern Ireland) Order 1999 (right to paid time off to act as companion, etc.);
- (d) in relation to the rights under sub-paragraphs (a) to (c), for rights to complain to an industrial tribunal and not to be subjected to a detriment, and about unfair dismissal;
- (e) for Article 95A applications to be treated as withdrawn in specified circumstances.

(2) In this Article “specified” means specified in the regulations.

*Employee's duties in relation to agreed study or training*

**95E.**—(1) This Article applies if an employer has agreed to an Article 95A application, or part of an Article 95A application, made by an employee in relation to particular study or training (the “agreed study or training”).

- (2) The employee must inform the employer if the employee—
- (a) fails to start the agreed study or training;
  - (b) fails to complete the agreed study or training;

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(c) undertakes, or proposes to undertake, study or training that differs from the agreed study or training in any respect (including those specified in Article 95C(4)(a)).

(3) The Department may make regulations about the way in which the employee is to comply with the duty under paragraph (2).

#### *Complaints to industrial tribunals*

**95F.**—(1) An employee who makes an Article 95A application may present a complaint to an industrial tribunal that—

- (a) the employer has failed to comply with Article 95C(4), (5) or (6), or
- (b) the employer's decision to refuse the application, or part of it, is based on incorrect facts.

This is subject to the following provisions of this Article.

(2) No complaint under this Article may be made in respect of an Article 95A application which has been disposed of by agreement or withdrawn.

(3) In the case of an Article 95A application that has not been disposed of by agreement or withdrawn, a complaint under this Article may only be made if the employer—

- (a) notifies the employee of a decision to refuse the application (or part of it) on appeal, or
- (b) commits a breach of regulations under Article 95C(4), where the breach is of a description specified by the Department in regulations.

(4) No complaint under this Article may be made in respect of failure to comply with provision included in regulations under Article 95C(4) because of—

- (a) Article 95D(1)(a) or (b), if provision is included in regulations under Article 95C(4) by virtue of Article 95D(1)(d), or
- (b) Article 95D(1)(c).

(5) An industrial tribunal may not consider a complaint under this Article unless the complaint is presented—

- (a) before the end of the period of three months beginning with the relevant date, or
- (b) within any further period that the tribunal considers reasonable, if the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(6) The relevant date is—

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- (a) in the case of a complaint permitted by paragraph (3)(a), the date on which the employee is notified of the decision on the appeal;
- (b) in the case of a complaint permitted by paragraph (3)(b), the date on which the breach was committed.

### *Remedies*

**95G.**—(1) If an industrial tribunal finds a complaint under Article 95F well-founded it must make a declaration to that effect and may—

- (a) make an order for reconsideration of the Article 95A application;
- (b) make an award of compensation to be paid by the employer to the employee.

(2) The amount of any compensation must be the amount the tribunal considers just and equitable in all the circumstances, but must not exceed the permitted maximum.

(3) The permitted maximum is the number of weeks' pay specified by the Department in regulations.

(4) If an industrial tribunal makes an order under paragraph (1)(a), Article 95C and regulations under that Article apply as if the application had been received on the date of the order (instead of on the date it was actually received).”.

## **PART 2** N.I.

### RELATED AMENDMENTS TO EMPLOYMENT LAW

#### *The Employment Rights (Northern Ireland) Order 1996 (NI 16)*

**1** In Article 2(2) (definitions) at the appropriate place insert—

““Article 95A application” has the meaning given by Article 95A(2);”.

**2** In Article 21 (how to calculate a week's pay in relation to rights during employment) after paragraph (4A) insert—

“(4B) Where the calculation is for the purposes of Article 95G, the calculation date is the day on which the Article 95A application was made.”.

**3** In Article 23(1) (maximum amount of week's pay) before paragraph (za) insert—

“(zza) an award of compensation under Article 95G(1)(b),”.

**4** After Article 70E (protection from suffering detriment in employment: flexible working) insert—

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*“Study and training*

**70F.**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employee's employer done on the ground that the employee—

- (a) made (or proposed to make) an Article 95A application,
- (b) exercised (or proposed to exercise) a right conferred on the employee under Article 95C,
- (c) brought proceedings against the employer under Article 95F, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

(2) This Article does not apply if the detriment in question amounts to dismissal within the meaning of Part 11.”.

**5** In Article 71 (right to present complaint of detriment to industrial tribunal), in paragraph (1) for “or 70E” substitute “, 70E or 70F”.

**6** After Article 135D (unfair dismissal: pension enrolment) insert—

*“Study and training*

**135E** 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 the employee—

- (a) made (or proposed to make) an Article 95A application,
- (b) exercised (or proposed to exercise) a right conferred on the employee under Article 95C,
- (c) brought proceedings against the employer under Article 95F, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.”.

**7** In Article 137 (unfair dismissal: redundancy), after paragraph (6C) insert—

“(6D) 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 135E.”.

**8** In Article 140(3) (exceptions to one year qualifying period of continuous employment for claims for unfair dismissal), after sub-paragraph (fi) insert—

“(fj) Article 135E applies,”.

**9** In Article 143(2) (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action) after sub-paragraph (dd) insert—

“(ddd) Article 135E applies,”.

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**10** In Article 144(2) (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (1) of that Article), after sub-paragraph (dd) insert—

“(ddd) Article 135E applies;”.

**11** In Article 242 (mariners)—

(a) in paragraph (2), before “VIII” insert “ 7A, ”;

(b) in paragraph (8)(d), before “VIII” insert “ 7A, ”.

**12** In Article 251(1A) (regulations subject to confirmatory Assembly procedure), after “70C,” insert “ 95A, 95C(7), ”.

*The Industrial Tribunals (Northern Ireland) Order 1996 (NI 18)*

**13** In Article 20 (conciliation), in paragraph (1)(c) after paragraph (vi) insert—

“(via) Article 95C(4), (5) or (6) or 95F(1)(b),”.

SCHEDULE 4 **N.I.**

Section 16.

REPEALS

**Commencement Information**

**I23** Sch. 4 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

Short Title	Extent of repeal
The Industrial Tribunals (Northern Ireland) Order 1996 (NI 18)	Article 20(2A). Article 21(2).
The Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21)	Article 88(1A).
The Employment (Northern Ireland) Order 2003 (NI 15)	Article 3(2) and (4). Article 11(2). Article 16. Articles 19 to 22. In Article 34(3), “16”, and “19, 20”. In Schedule 1— Part 2; in paragraph 14 the words “and (5)” and “and “grievance hearing””;

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paragraph 15.  
Schedule 3.

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**Changes to legislation:**

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