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STATUTORY INSTRUMENTS

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**1993 No. 2668**

**The Industrial Relations (Northern Ireland) Order 1993**

*Employment rights*

**Maternity rights**

3. For Articles 14 to 32 of the No. 2 Order (maternity rights of employees) there shall be substituted the Articles set out in Schedule 1.

**Right to employment particulars**

4.—(1) In the No. 2 Order—

- (a) after Article 42 there shall be inserted the Articles 43 to 43E, together with the heading, set out in Part I of Schedule 2; and
- (b) for Article 47 there shall be substituted the Article and heading set out in Part II of that Schedule.

(2) Sections 4 and 5 of the Act of 1965 (which are superseded by the provisions set out in Schedule 2) shall cease to have effect.

**Entitlement to itemised pay statement**

5. After Article 49(5) of the No. 2 Order (provisions disappplied in relation to employment below minimum number of hours weekly) there shall be inserted—

“(5A) Subject to paragraph (5B), paragraph (5) shall have effect as respects Article 44 subject to the following modifications, namely—

- (a) the substitution of a reference to 8 hours weekly for the reference to 16 hours weekly; and
- (b) the omission of the words “Subject to paragraphs (6), (7) and (8)”.

(5B) Paragraph (5A) shall not apply in relation to employment if, at the relevant date, the number of employees employed by the employer, added to the number employed by any associated employer, is less than 20.

(5C) For the purposes of paragraph (5B) “relevant date” means the date on which any payment of wages or salary is made to an employee in respect of which he would, apart from paragraph (5B), have the right to an itemised pay statement.”.

**Right to claim unfair dismissal and not to suffer detriment in health and safety cases**

6.—(1) In the No. 2 Order after Article 13 there shall be inserted the heading and Articles set out in Part I of Schedule 3 (which confer a right not to suffer detriment in health and safety cases).

(2) In the No. 1 Order after Article 22A there shall be inserted the Article set out in Part II of Schedule 3 (which provides for certain dismissals in health and safety cases to be unfair).

(3) In the No. 1 Order for Articles 33 to 34 there shall be substituted the Articles set out in Part III of Schedule 3 (which re-enact those provisions with amendments relating to certain dismissals in health and safety cases).

(4) In the No. 1 Order for Articles 39 to 41 there shall be substituted the heading and Articles set out in Part IV of Schedule 3 (which re-enact those provisions with amendments relating to certain dismissals in health and safety cases).

### **Dismissal on ground of assertion of statutory right**

7. After Article 22C of the No. 1 Order there shall be inserted—

#### **“Dismissal on ground of assertion of statutory right**

**22D.**—(1) The dismissal of an employee by an employer shall be regarded for the purposes of this Order as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or
- (b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of paragraph (1) whether the employee has the right or not and whether it has been infringed or not, but, for that paragraph to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It shall be sufficient for paragraph (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) The following statutory rights are relevant for the purposes of this Article, namely—

- (a) any right conferred by—
  - (i) the Act of 1965;
  - (ii) this Order;
  - (iii) the No. 2 Order; or
  - (iv) the Wages (Northern Ireland) Order 1988,for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal;
- (b) the right conferred by—
  - (i) section 1 of the Act of 1965; or
  - (ii) Article 38 or 65 of the Industrial Relations (Northern Ireland) Order 1992 (deductions from pay).”.

### **Compensation for unfair dismissal when reinstatement or re-engagement ordered**

**8.**—(1) Articles 32, 36 and 37 of the No. 1 Order (awards of compensation for unfair dismissal) shall be amended in accordance with paragraphs (2) to (6).

(2) In Article 32(1) for the words “Article 37” there shall be substituted the words “paragraph (1A)”.

(3) In Article 32 after paragraph (1) there shall be inserted—

“(1A) Paragraph (1) is subject to Article 37 except that the limit imposed by that Article may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under Article 31(3)(a) or (5)(d), as the case may be.”.

(4) In Article 36(1) for the words “Articles 37 and 38” there shall be substituted the words “paragraph (8) and Article 38”.

(5) In Article 36 after paragraph (7) there shall be added—

“(8) Paragraph (1) is subject also to Article 37 except that, in the case of an award of compensation under Article 32(2)(a) where an additional award falls to be made, the limit imposed by Article 37 may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under Article 31(3)(a) or (5)(d), as the case may be, if that limit would otherwise reduce the amount of the compensatory award when added to the additional award.”.

(6) In Article 37(1) after the word “shall” there shall be inserted the words “(save where the exception in Article 32(1A) or 36(8) applies)”.

### **Application of industrial relations legislation to the Crown**

9.—(1) Subject to the following provisions of this Article—

- (a) the provisions of the No. 1 Order, except Articles 42 to 47 and Part IV;
- (b) the provisions of the No. 2 Order; and
- (c) the provisions of the 1992 Order, except Articles 42, 43 and 65(5),

shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.

(2) In this Article “Crown employment” means employment under or for the purposes of a government department.

(3) This Article applies to service as a member of the naval, military or air forces of the Crown but only in accordance with Article 10 and it applies also to employment by any association established for the purposes of Part VI of the Reserve Forces Act 1980(1).

(4) The provisions listed in paragraph (5) shall not have effect in relation to any Crown employment in respect of which there is in force a certificate issued by or on behalf of the Secretary of State certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from this Article for the purpose of safeguarding national security or protecting public safety or public order; and any document purporting to be a certificate so issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.

(5) The provisions referred to in paragraph (4) are the following, namely—

- (a) in the No. 1 Order—
  - (i) Articles 20 to 41 (except so far as relating to a dismissal which is regarded as unfair by reason of Article 22B or 22C(1)(b), (c) or (d) of the No. 1 Order or Article 29 of the No. 2 Order);
  - (ii) Article 48 (except paragraph (2B));
  - (iii) Part V (so far as relating to any of those provisions);
- (b) in the No. 2 Order—
  - (i) Articles 3 to 13;
  - (ii) Articles 39 to 41;

- (iii) Articles 44 to 46 and 47 (so far as relating to Articles 44 to 46);
- (iv) Part IV (so far as relating to any of those provisions).

(6) For the purposes of the application of the provisions mentioned in paragraph (1) in relation to Crown employment in accordance with that paragraph—

- (a) any reference to an employee shall be construed as a reference to a person in Crown employment;
- (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of a person in Crown employment;
- (c) any reference to dismissal shall be construed as a reference to the termination of Crown employment;
- (d) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 48(3) of the Act of 1965, are treated as equivalent to redundancy in relation to Crown employment;
- (e) the reference in Article 59(7)(c) of the No. 1 Order and Article 40(1)(e) of the 1992 Order to a person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest; and
- (f) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown or Head of a department, as a reference to his functions or (as the context may require) to the department of which he is in charge and, in relation to a government department, shall be construed as a reference to the functions of the department or (as the context may require) to the department.

(7) Where the terms of employment of a person in Crown employment restrict his right to take part in—

- (a) certain political activities; or
- (b) activities which may conflict with his official functions,

nothing in Article 39 of the No. 2 Order shall require him to be allowed time off work for public duties connected with any such activities.

(8) In this Article—

“government department” means a Northern Ireland department or a department of the Government of the United Kingdom;

“the 1992 Order” means the Industrial Relations (Northern Ireland) Order 1992(2).

(9) This Article and Article 10 shall be construed as one with the No. 1 Order.

### **Application of No. 1 and No. 2 Orders to armed forces**

**10.**—(1) The provisions which apply, by virtue of Article 9, to service as a member of the naval, military or air forces of the Crown are—

- (a) in the No. 1 Order—
  - (i) Articles 20 to 41 (except Article 22B);
  - (ii) Article 48; and
  - (iii) Part V;
- (b) in the No. 2 Order—

- (i) Articles 9 to 13;
  - (ii) Articles 14 to 32;
  - (iii) Article 41A;
  - (iv) Articles 43 to 47;
  - (v) Article 49; and
  - (vi) Part IV.
- (2) The Secretary of State may by order—
- (a) amend paragraph (1) by making additions to, or omissions from, the provisions for the time being specified in that paragraph; and
  - (b) make any provision apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the order.
- (3) Subject to paragraph (5), modifications made under paragraph (2) may include provision precluding the making of a complaint or reference to any industrial tribunal unless the person aggrieved has availed himself of the service procedures for the redress of complaints applicable to him.
- (4) Where modifications include the provision authorised by paragraph (3) the order shall also include provision designed to secure that the service procedures for the redress of complaints result in a determination, or what is to be treated under the order as a determination, in sufficient time to enable a complaint or reference to be made to an industrial tribunal.
- (5) No provision shall be made by virtue of paragraph (3) which has the effect of substituting, for any period specified as the normal period for a complaint or reference on any matter to an industrial tribunal, a period longer than six months.
- (6) No order shall be made under paragraph (2) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.
- (7) In this Article—
- “the normal period for a complaint or reference”, in relation to any matter within the jurisdiction of an industrial tribunal, means the period specified in the relevant statutory provision as the period within which the complaint or reference must be made, disregarding any provision permitting an extension of that period at the discretion of the tribunal; and
- “the service procedures for the redress of complaints” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in sections 180 and 181 of the Army Act 1955(3), sections 180 and 181 of the Air Force Act 1955(4) and section 130 of the Naval Discipline Act 1957(5).

### **Right to declaration of invalidity of discriminatory terms and rules**

**11.** In Article 77A of the Sex Discrimination (Northern Ireland) Order 1976(6) (application of Article 77 to certain terms and rules), after paragraph (4) there shall be inserted—

“(4A) A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of paragraph (1) of Article 77 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and

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(3) 1955 c. 18  
(4) 1955 c. 19  
(5) 1957 c. 53  
(6) 1976 NI 15

- (b) where he alleges that it is void by virtue of sub-paragraph (c) of that paragraph, that—
  - (i) an act for the doing of which it provides may at some such time be done in relation to him; and
  - (ii) the act would be, or be deemed by virtue of paragraph (3) to be, rendered unlawful by this Order if done in relation to him in present circumstances.
- (4B) In the case of a complaint about—
  - (a) a term of a collective agreement made by or on behalf of—
    - (i) an employer;
    - (ii) an organisation of employers of which an employer is a member; or
    - (iii) an association of such organisations of one of which an employer is a member; or
  - (b) a rule made by an employer,
 paragraph (4A) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.
- (4C) In the case of a complaint about a rule made by an organisation, authority or body to which paragraph (2) applies, paragraph (4A) applies to any person—
  - (a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body;
  - (b) on whom the organisation, authority or body has conferred an authorisation or qualification; or
  - (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.
- (4D) When an industrial tribunal finds that a complaint presented to it under paragraph (4A) is well-founded the tribunal shall make an order declaring that the term or rule is void.”.

### **Redundancy consultation procedures**

**12.**—(1) Part IV of the No. 1 Order (procedure for handling redundancies) shall be amended in accordance with paragraphs (2) to (7).

- (2) In Article 49—
  - (a) in paragraph (5) after sub-paragraph (e) there shall be inserted
    - “and
    - (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any statutory provision) to employees who may be dismissed.”;
  - (b) for paragraph (7) there shall be substituted—
    - “(7) The consultation required by this Article shall include consultation about ways of—
      - (a) avoiding the dismissals;
      - (b) reducing the numbers of employees to be dismissed; and
      - (c) mitigating the consequences of the dismissals,
 and shall be undertaken by the employer with a view to reaching agreement with the trade union representatives.”; and

- (c) at the end of paragraph (8) there shall be inserted—
- “Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.”.
- (3) In Article 50, at the end of paragraph (6) there shall be inserted—
- “Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.”.
- (4) Article 52(3) shall cease to have effect.
- (5) In Article 52(5)(a) for the words “for a reason other than redundancy” there shall be substituted “otherwise than as redundant”.
- (6) In Article 56—
- (a) for paragraph (2) there shall be substituted—
- “(1) In this Part references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.
- (2) For the purposes of any proceedings under this Part, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.”;
- (b) paragraph (4A) shall cease to have effect.
- (7) In Article 57(1)(b) for the words “the handling of redundancies” there shall be substituted “handling the dismissal of employees as redundant”.
- (8) In Article 76 of the No. 1 Order—
- (a) in paragraph (7) for the words “Articles 42, 43, 49 and 50” there shall be substituted “Articles 42 and 43”; and
- (b) paragraph (9) shall cease to have effect.