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STATUTORY INSTRUMENTS

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**1996 No. 1919**

**The Employment Rights (Northern Ireland) Order 1996**

PART VI

PROTECTION FROM SUFFERING DETRIMENT ETC. IN EMPLOYMENT

CHAPTER I

RIGHTS NOT TO SUFFER DETRIMENT

**Remedies**

72.—(1) Where an industrial tribunal finds a complaint under [<sup>F1</sup>Article 71(1), (1ZA), (1A) or (1B)] well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

[<sup>F2</sup>(1A) Where an industrial tribunal finds a complaint under Article 71(1AA) well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the temporary work agency or (as the case may be) the hirer to the complainant in respect of the act or failure to act to which the complaint relates.]

(2) [<sup>F3</sup>Subject to<sup>F4</sup> paragraphs (5A) and (6)], the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement to which the complaint relates, and
- (b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

(3) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates, and
- (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

[<sup>F4</sup>(5A) Where—

- (a) the complaint is made under Article 71(1ZA),

*Status: Point in time view as at 01/10/2017. This version of this provision has been superseded.*

*Changes to legislation: The Employment Rights (Northern Ireland) Order 1996, Section 72 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the detriment to which the worker is subjected is the termination of his 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 II of Part XI if the worker had been an employee and had been dismissed for the reason specified in Article 132A.]

[<sup>F3</sup>(6) Where—

(a) the complaint is made under Article 71(1A),

(b) the detriment to which the worker is subject is the termination of his 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 II of Part XI if the worker had been an employee and had been dismissed for the reason specified in Article 134A.]

[<sup>F5</sup>(6A) Where—

(a) the complaint is made under Article 71(1A), and

(b) it appears to the tribunal that the protected disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.]

[<sup>F6</sup>(7) Where—

(a) the complaint is made under Article 71(1B) by a person who is not an employee, and

(b) the detriment to which he is subjected is the termination of his contract with the person who is his employer for the purposes of section 25 of the Tax Credits Act 2002,

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

**F1** Words in art. 72(1) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 18\(4\)\(a\), 23\(1\)](#); S.R. 2015/86, art. 3(1)(o)

**F2** Art. 72(1A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 18\(4\)\(b\), 23\(1\)](#); S.R. 2015/86, art. 3(1)(o)

**F3** 1998 NI 17

**F4** SR 1998/386

**F5** Art. 72(6A) inserted (1.10.2017) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 14\(4\), 29\(2\)](#); S.R. 2017/199, art. 2

**F6** Art. 72(7) inserted (1.9.2002 for certain purposes, otherwise prosp.) by [Tax Credits Act 2002 \(c. 21\), ss. 27, 61, Sch. 1 para. 2\(4\)](#); S.I. 2002/1727, art. 2

#### **Modifications etc. (not altering text)**

**C1** Art. 72 applied (6.4.2006) by [Occupational and Personal Pension Schemes \(Consultation by Employers\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/48\), reg. 17, Sch. para. 8\(2\)](#)

**C2** Art. 72 applied (with modifications) (30.6.2012) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), ss. 56, 118\(1\) \(with s. 73\)](#); S.R. 2012/266, art. 2(b), Sch. Pt. 2

**C3** Art. 72(1)-(5) applied (18.8.2006) by [European Cooperative Society \(Involvement of Employees\) Regulations 2006 \(S.I. 2006/2059\), regs. 2, 34\(3\), Sch. 3 para. 22](#)

**C4** Art. 72(1)-(5) applied (15.12.2007) by [Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\), regs. 22\(3\), 51\(2\), Sch. 2 paras. 10, 20](#)

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**C5** Art. 72(1)-(5) applied (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 32(3)** (with reg. 39)

**Status:**

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