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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

#### [<sup>F1</sup>Jury service

**67M.**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the employee—

- (a) has been summoned under the Juries (Northern Ireland) Order 1974 (NI 6) or the Coroners (Northern Ireland) Act 1959 (c.15) to attend for service as a juror, or
- (b) has been absent from work because he attended at any place in pursuance of being so summoned.

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

(3) For the purposes of this Article, an employee is not to be regarded as having been subjected to a detriment by a failure to pay remuneration in respect of a relevant period unless under his contract of employment he is entitled to be paid that remuneration.

(4) In paragraph (3) “a relevant period” means any period during which the employee is absent from work because of his attendance at any place in pursuance of being summoned as mentioned in paragraph (1)(a).]

**F1** [2004 NI 19](#)

#### Health and safety cases

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

- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,
- (b) being a representative of workers on matters of health and safety at work or member of a safety committee—
  - (i) in accordance with arrangements established under or by virtue of any statutory provision, or
  - (ii) by reason of being acknowledged as such by the employer,

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the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

[<sup>F2</sup>(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),]

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of paragraph (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) An employee is not to be regarded as having been subjected to any detriment on the ground specified in paragraph (1)(e) if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

(4) <sup>F3</sup> . . . this Article does not apply where the detriment in question amounts to dismissal (within the meaning of<sup>F3</sup> Part XI).

**F2** SR 1996/511

**F3** 1999 NI 9

#### [<sup>F4</sup>Working time cases

**68A.**—(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker-

(a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations (Northern Ireland) 1998,

(b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,

(d) being—

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or

(ii) a candidate in an election in which any person elected will, on being elected, be such a representative,  
performed (or proposed to perform) any functions or activities as such a representative or candidate,

(e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or

(f) alleged that the employer had infringed such a right.

(2) It is immaterial for the purposes of paragraph (1)(e) or (f)—

(a) whether or not the worker has the right, or

(b) whether or not the right has been infringed,

but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.

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

(4) This Article does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part XI<sup>F5</sup>. . . .

[  
<sup>F6</sup>(5) A reference in this Article to the Working Time Regulations (Northern Ireland) 1998 includes a reference to

(a)] the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.

[ the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.]]  
<sup>F7</sup>(b)

**F4** SR 1998/386

**F5** [1999 NI 9](#)

**F6** SI 2003/3049

**F7** SI 2004/1713

### Trustees of occupational pension schemes

**69.**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) <sup>F8</sup>. . . this Article does not apply where the detriment in question amounts to dismissal (within the meaning of<sup>F8</sup> Part XI)].

[<sup>F9</sup>(2A) This Article applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).]

(3) In this Article “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993) established under a trust.

**F8** [1999 NI 9](#)

**F9** [1999 NI 11](#)

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## Employee representatives

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

- (a) an employee representative for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

he performed (or proposed to perform) any functions or activities as such an employee representative or candidate.

[<sup>F10</sup>(1A) An employee has the right not to be subjected to any detriment by any act, or by any deliberate failure to act, by his employer done on the ground of his participation in an election of employee representatives for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.]

(2) <sup>F11</sup> . . . this Article does not apply where the detriment in question amounts to a dismissal (within the meaning of [<sup>F11</sup> Part XI]).

**F10** SR 1999/432

**F11** 1999 NI 9

## [<sup>F12</sup>Employees exercising right to time off work for study or training

**70A.**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer or the principal (within the meaning of Article 91A(3)) done on the ground that, being a person entitled to—

- (a) time off under Article 91A(1) or (3), and
- (b) remuneration under Article 91B(1) in respect of that time taken off,

the employee exercised (or proposed to exercise) that right or received (or sought to receive) such remuneration.

(2) <sup>F13</sup> . . . this Article does not apply where the detriment in question amounts to dismissal (within the meaning of [<sup>F13</sup> Part XI]).]

**F12** 1998 NI 15

**F13** 1999 NI 9

## [<sup>F14</sup>Protected disclosures

**70B.**—(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(2) <sup>F15</sup> . . . this Article does not apply where—

- (a) the worker is an employee, and
- (b) the detriment in question amounts to dismissal (within the meaning of [<sup>F15</sup> Part XI]).

(3) For the purposes of this Article, and of Articles 71 and 72 so far as relating to this Article, “worker”, “worker's contract”, “employment” and “employer” have the extended meaning given by Article 67K.]

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- F14 1998 NI 17
- F15 1999 NI 9

**[<sup>F16</sup>Leave for family and domestic reasons**

**70C.**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Department and which relates to—

- (a) pregnancy, childbirth or maternity,
- (b) ordinary, compulsory or additional maternity leave,  
[ ordinary or additional adoption leave,]

<sup>F17</sup>(ba)

- (c) parental leave,  
[ paternity leave, or]

<sup>F17</sup>(ca)

- (d) time off under Article 85A.

(3) A reason prescribed under this Article in relation to parental leave may relate to action which an employee takes, agrees to take or refuses to take under or in respect of a collective or workforce agreement.]

- F16 1999 NI 9
- F17 2002 NI 2

.....<sup>F18</sup>

**F18** prosp. in pt. inserted by 2002 c. 21 for the purpose of rights conferred on employees by virtue of regulations under s. 25

**[<sup>F19</sup>Flexible working**

[  
<sup>F20</sup>**70E].**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee—

- (a) made (or proposed to make) an application under Article 112F,
- (b) exercised (or proposed to exercise) a right conferred on him under Article 112G,
- (c) brought proceedings against the employer under Article 112H, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

(2) This Article does not apply where the detriment in question amounts to dismissal within the meaning of Part XI.]

- F19 2002 NI 2
- F20 2003 NI 15

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## Complaints to industrial tribunals

**71.—**(1) An employee may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article<sup>[F21 67M,]</sup> 68,<sup>[F22 69, 70]</sup><sup>[F23 ,70A]</sup><sup>[F24 , 70C or]</sup><sup>[F25 70E]</sup>]]].

<sup>[F26(1ZA)</sup> A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 68A.]

<sup>[F27(1A)</sup> A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 70B.]

<sup>[F28(1B)</sup> A person may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 70D.]

(2) <sup>[F27</sup>On a complaint under this Article] it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of paragraph (3)—

- (a) where an act extends over a period, the “date of the act” means the last day of that period, and
- (b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

<sup>[F22(5)</sup> In this Article and Article 72 any reference to the employer includes, where a person complains that he has been subjected to a detriment in contravention of Article 70A, the principal (within the meaning of Article 91A(3)).]

**F21** 2004 NI 19

**F22** 1998 NI 15

**F23** 1999 NI 9

**F24** 2002 NI 2

**F25** 2003 NI 15

**F26** SR 1998/386

**F27** 1998 NI 17

**F28** Art. 71(1B) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 27, 61, **Sch. 1 para. 2(3)**; S.I. 2002/1727, **art. 2**

### Modifications etc. (not altering text)

**C1** Art. 71 applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 13(3)** (with reg. 50)

**C2** Art. 71(2)-(4) 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)**

**C3** Art. 71(2)-(14) applied (18.8.2006) by virtue of European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 2, 34(2), **Sch. 3 para. 22**

- C4** Art. 71(2)-(4) applied (with modifications) (prosp.) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 56, 118(1) (with s. 73)
- C5** Art. 71(2)-(4) applied (with modifications) (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), reg. 32(2) (with reg. 39)

## Remedies

72.—(1) Where an industrial tribunal finds a complaint under Article 71 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.

(2) [<sup>F29</sup>Subject to [<sup>F30</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>F30</sup>(5A) Where—

- (a) the complaint is made under Article 71(1ZA),
- (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>F29</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>F31</sup>(7) Where—

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

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(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.]

- F29** 1998 NI 17  
**F30** SR 1998/386  
**F31** 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)**

- C6** 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)**  
**C7** Art. 72 applied (with modifications) (prosp.) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 56, 118(1)** (with s. 73)  
**C8** 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**  
**C9** 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**  
**C10** 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)

**[<sup>F32</sup>Application to police of Article 68 and related provisions**

**72A.**—(1) For the purposes of Article 68, and of Articles 71 and 72 so far as relating to that Article, the holding, otherwise than under a contract of employment, of the office of constable -shall be treated as employment by the relevant officer under a contract of employment.

(2) In this Article “the relevant officer”

[ in relation to a police officer, means the Chief Constable;]

<sup>F33</sup>(a)

(b) <sup>F34</sup> .....

(c) in relation to any other person holding the office of constable, means the person who has the direction and control of the body of constables in question.]

- F32** 1997 NI 16  
**F33** 2000 c. 32  
**F34** Art. 72A(2)(b) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174(2), 178(8), **Sch. 4 para. 91, Sch. 17 Pt. 2**; S.I. 2006/378, **art. 4(1)**, **Sch. paras. 10, 12, 13(bb)** (with art. 4(2)-(7))

CHAPTER II

**[<sup>F35</sup>DETRIMENT]**

- F35** 2004 NI 19



### [<sup>F36</sup>Detriment] on grounds related to union membership or activities

73.—(1) [<sup>F36</sup>A worker] has the right not to [<sup>F37</sup> be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place] for [<sup>F36</sup> the sole or main purpose] of—

(a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so.

(b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so,<sup>F36</sup> . . .

[<sup>F36</sup>(ba) preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or]

(c) compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

(2) In paragraph [<sup>F36</sup> (1)] “an appropriate time” means—

(a) a time outside the [<sup>F36</sup> worker's] working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union [<sup>F36</sup> or (as the case may be) make use of trade union services];

and for this purpose “working hours”, in relation to [<sup>F36</sup> a worker], means any time when, in accordance with his contract of employment [<sup>F36</sup> (or other contract personally to do work or perform services)], he is required to be at work.

[<sup>F36</sup>(2A) In this Article—

(a) “trade union services” means services made available to the worker by an independent trade union by virtue of his membership of the union, and

(b) references to a worker's “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(2B) If an independent trade union of which a worker is a member raises a matter on his behalf (with or without his consent), penalising the worker for that is to be treated as penalising him as mentioned in paragraph (1)(ba).

(2C) A worker also has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place because of the worker's failure to accept an offer made in contravention of Article 77A or 77B.

(2D) For the purposes of paragraph (2C), not conferring a benefit that, if the offer had been accepted by the worker, would have been conferred on him under the resulting agreement shall be taken to be subjecting him to a detriment as an individual (and to be a deliberate failure to act).]

(3) [<sup>F36</sup>A worker] also has the right not to [<sup>F37</sup> be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place] for [<sup>F36</sup> the sole or main purpose] of enforcing a requirement (whether or not imposed by [<sup>F36</sup> a contract of employment] or in writing) that, in the event of his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments.

(4) For the purposes of paragraph (3) any deduction made by an employer from the remuneration payable to [<sup>F36</sup> a worker] in respect of his employment shall, if it is attributable to his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, be treated as [<sup>F37</sup> a detriment to which he has been subjected as an individual by an act of his employer taking place] for [<sup>F36</sup> the sole or main purpose] of enforcing a requirement of a kind mentioned in that paragraph.

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(5) References in this Chapter to being or becoming a member of a trade union include references to being or becoming a member of a particular branch or section of that union and to being or becoming a member of one of a number of particular branches or sections of that union<sup>F36</sup> . . . .

[<sup>F36</sup>(5A) References in this Chapter—

- (a) to taking part in the activities of a trade union, and
- (b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (5).]

[<sup>F36</sup>(6) This Article does not apply where—

- (a) the worker is an employee; and
- (b) the detriment in question amounts to dismissal.

(7) In this Chapter—

“worker” means an individual who works, or normally works as mentioned in paragraphs (a) to (c) of the definition of “worker” in Article 2(2) of the 1995 Order; and

“employer” means—

- (a) in relation to a worker, the person for whom he works;
- (b) in relation to a former worker, the person for whom he worked.]

**F36** 2004 NI 19

**F37** 1999 NI 9

### Complaints to industrial tribunal

74.—(1) [<sup>F38</sup>A worker or former worker] may present a complaint to an industrial tribunal on the ground that [<sup>F39</sup> he has been subjected to a detriment] by his employer in contravention of Article 73.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the date of the [<sup>F39</sup> act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them], or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[<sup>F39</sup>(3) For the purposes of paragraph (2)—

- (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;
- (b) a failure to act shall be treated as done when it was decided on.

(4) For the purposes of paragraph (3), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

- (a) when he does an act inconsistent with doing the failed act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.]

**F38** 2004 NI 19

**F39** 1999 NI 9

## Consideration of complaint

75.—(1) On a complaint under Article 74 it shall be for the employer to show<sup>F40</sup> what was the sole or main purpose] for which<sup>F41</sup> he acted or failed to act].

(2) In determining any question whether<sup>F41</sup> the employer acted or failed to act, or the purpose for which he did so], no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

*Paras. (3)-(5) rep. by 2004 NI 19*

F40 2004 NI 19

F41 1999 NI 9

## Remedies

76.—(1) Where the industrial tribunal finds that a complaint under Article 74 is 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<sup>F42</sup> act of failure] complained of.

(2) 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 complained of; and
- (b) any loss sustained by the complainant which is attributable to the<sup>F42</sup> act or failure] which infringed his right.

(3) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the<sup>F42</sup> act or failure] complained of, and
- (b) loss of any benefit which he might reasonably be expected to have had but for that<sup>F42</sup> act or failure].

(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) In determining the amount of compensation to be awarded no account shall be taken of any pressure which was exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(6) Where the tribunal finds that the<sup>F42</sup> act or failure] complained of 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.

F42 1999 NI 9

## Awards against third parties

77.—(1) If in proceedings on a complaint under Article 74—

*Status: Point in time view as at 01/04/2006.*

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- (a) the complaint is made on the ground that<sup>F43</sup> the complainant has been subjected to detriment by an act or failure by his employer taking place] for<sup>F44</sup> the sole or main purpose] of compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions, and
- (b) either the complainant or the employer claims in proceedings before the tribunal that the employer was induced to<sup>F43</sup> act or fail to act in the way] complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so,

the complainant or the employer may request the tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made a declaration that the complaint is well-founded.

(3) Where a person has been so joined as a party to proceedings and the tribunal—

- (a) makes an award of compensation, and
- (b) finds that the claim mentioned in paragraph (1)(b) is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable in the circumstances.

**F43** 1999 NI 9  
**F44** 2004 NI 19

### ]<sup>F45</sup>CHAPTER III INDUCEMENTS

**F45** 2004 NI 19

#### **Inducements relating to union membership or activities**

**77A.**—(1) A worker has the right not to have an offer made to him by his employer for the sole or main purpose of inducing the worker—

- (a) not to be or seek to become a member of an independent trade union,
- (b) not to take part, at an appropriate time, in the activities of an independent trade union,
- (c) not to make use, at an appropriate time, of trade union services, or
- (d) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

(2) In paragraph (1) “an appropriate time” means—

- (a) a time outside the worker's working hours, or
- (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services.

(3) In paragraph (2) “working hours”, in relation to a worker, means any time when, in accordance with his contract of employment (or other contract personally to do work or perform services), he is required to be at work.

- (4) In paragraphs (1) and (2)—
- (a) “trade union services” means services made available to the worker by an independent trade union by virtue of his membership of the union, and
  - (b) references to a worker's “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.
- (5) A worker or former worker may present a complaint to an industrial tribunal on the ground that his employer has made him an offer in contravention of this Article.

### **Inducements relating to collective bargaining**

**77B.**—(1) A worker who is a member of an independent trade union which is recognised, or seeking to be recognised, by his employer has the right not to have an offer made to him by his employer if—

- (a) acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, would have the prohibited result, and
  - (b) the employer's sole or main purpose in making the offers is to achieve that result.
- (2) The prohibited result is that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union.
- (3) It is immaterial for the purposes of paragraph (1) whether the offers are made to the workers simultaneously.
- (4) Having terms of employment determined by collective agreement shall not be regarded for the purposes of Article 77A (or Article 73 or 136) as making use of a trade union service.
- (5) A worker or former worker may present a complaint to an industrial tribunal on the ground that his employer has made him an offer in contravention of this Article.

### **Time limit for proceedings**

**77C.** An industrial tribunal shall not consider a complaint under Article 77A or 77B unless it is presented—

- (a) before the end of the period of three months beginning with the date when the offer was made or, where the offer is part of a series of similar offers to the complainant, the date when the last of them was made, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

### **Consideration of complaint**

**77D.**—(1) On a complaint under Article 77A it shall be for the employer to show what was his sole or main purpose in making the offer.

(2) On a complaint under Article 77B it shall be for the employer to show what was his sole or main purpose in making the offers.

(3) On a complaint under Article 77A or 77B, in determining any question whether the employer made the offer (or offers) or the purpose for which he did so, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(4) In determining whether an employer's sole or main purpose in making offers was the purpose mentioned in Article 77B(1), the matters taken into account must include any evidence—

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- (a) that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining,
- (b) that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining, or
- (c) that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer.

## Remedies

**77E.**—(1) Paragraphs (2) and (3) apply where the industrial tribunal finds that a complaint under Article 77A or 77B is well#founded.

(2) The tribunal—

- (a) shall make a declaration to that effect, and
- (b) shall make an award to be paid by the employer to the complainant in respect of the offer complained of.

(3) The amount of the award shall be [<sup>F46</sup>£2,600] (subject to any adjustment of the award that may fall to be made under Part IV of the Employment (Northern Ireland) Order 2003).

(4) Where an offer made in contravention of Article 77A or 77B is accepted—

- (a) if the acceptance results in the worker's agreeing to vary his terms of employment, the employer cannot enforce the agreement to vary, or recover any sum paid or other asset transferred by him under the agreement to vary;
- (b) if as a result of the acceptance the worker's terms of employment are varied, nothing in Article 77A or 77B makes the variation unenforceable by either party.

(5) Nothing in this Article or Articles 77A and 77B prejudices any right conferred by Article 73 or 76.

(6) In ascertaining any amount of compensation under Article 76, no reduction shall be made on the ground—

- (a) that the complainant caused or contributed to his loss, or to the act or failure complained of, by accepting or not accepting an offer made in contravention of Article 77A or 77B, or
- (b) that the complainant has received or is entitled to an award under this Article.

**F46** Words in art. 77E(3) substituted (26.3.2006) by [Employment Rights \(Increase of Limits\) Order \(Northern Ireland\) 2006 \(S.R. 2006/75\)](#), art. 3, [Sch.](#) (with art. 4)

## Interpretation and other supplementary provisions

**77F.**—(1) References in Articles 77A to 77E to being or becoming a member of a trade union include references—

- (a) to being or becoming a member of a particular branch or section of that union, and
- (b) to being or becoming a member of one of a number of particular branches or sections of that union.

(2) References in those Articles—

- (a) to taking part in the activities of a trade union, and
- (b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (1).

(3) In Articles 77A to 77E—

“worker” means an individual who works, or normally works as mentioned in paragraphs (a) to (c) of the definition of “worker” in Article 2(2) of the 1995 Order; and

“employer” means—

- (a) in relation to a worker, the person for whom he works;
- (b) in relation to a former worker, the person for whom he worked.]

**Status:**

Point in time view as at 01/04/2006.

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