
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XI **N.I.**

UNFAIR DISMISSAL

CHAPTER I **N.I.**

RIGHT NOT TO BE UNFAIRLY DISMISSED

Fairness

General **N.I.**

130.—(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this paragraph if it—

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- (b) relates to the conduct of the employee,

(ba) ^{F1}

- (c) is that the employee was redundant, or
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under a statutory provision.

(2A) ^{F2}

(3) In paragraph (2)(a)—

- (a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
- (b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(3A) ^{F3}

(4) [^{F4}Where] the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

Changes to legislation: *The Employment Rights (Northern Ireland) Order 1996, Cross Heading: Fairness is up to date with all changes known to be in force on or before 24 June 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) View outstanding changes*

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.

Para. (5) rep. by 1999 NI 9

- (6) [^{F5}Paragraph (4) is] subject to Articles^{F6} 130A] to 139^{F7}, 144 and 144A].

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|-----------|---|
| F1 | Art. 130(2)(ba) omitted (6.4.2011) by virtue of Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011 (S.R. 2011/168), reg. 3(2)(a) (with regs. 4, 5, 7) |
| F2 | Art. 130(2A) omitted (6.4.2011) by virtue of Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011 (S.R. 2011/168), reg. 3(2)(a) (with regs. 4, 5, 7) |
| F3 | Art. 130(3A) omitted (6.4.2011) by virtue of Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011 (S.R. 2011/168), reg. 3(2)(a) (with regs. 4, 5, 7) |
| F4 | Word in art. 130(4) substituted (6.4.2011) by Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011 (S.R. 2011/168), reg. 3(2)(b) (with regs. 4, 5, 7) |
| F5 | 1999 NI 9 |
| F6 | 2003 NI 15 |
| F7 | 2004 NI 19 |

Changes to legislation:

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Pt. 7A inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 1](#)
- Ch. 5 inserted by [2022 c. 27 \(N.I.\) s. 1\(1\)](#)
- art. 21(4B) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 2](#)
- art. 23(1)(zza) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 3](#)
- art. 70F inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 4](#)
- art. 70G inserted by [2020 c. 7 Sch. 7 para. 20](#)
- art. 71(1C) inserted by [2020 c. 7 Sch. 7 para. 21\(a\)](#)
- art. 72(8) inserted by [2020 c. 7 Sch. 7 para. 22\(b\)](#)
- art. 85ZS(3)(a)-(c) substituted for words by [2022 c. 18 \(N.I.\) Sch. 3 para. 47\(4\)](#)
- art. 95F(5A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 32](#)
- art. 135E inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 6](#)
- art. 135G inserted by [2020 c. 7 Sch. 7 para. 25](#)
- art. 137(6D) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 7](#)
- art. 137(7N) inserted by [2020 c. 7 Sch. 7 para. 26\(b\)](#)
- art. 140(3)(fj) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 8](#)
- art. 140(3)(fl) inserted by [2020 c. 7 Sch. 7 para. 27](#)
- art. 143(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 9](#)
- art. 144(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 10](#)