

## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART XV

#### MISCELLANEOUS

##### CHAPTER II

##### OTHER MISCELLANEOUS MATTERS

##### *Restrictions on disclosure of information*

##### **National security etc.**

**244.**—(1) Where in the opinion of the Secretary of State the disclosure of any information would be contrary to the interests of national security or would endanger public safety or public order—

- (a) nothing in any of the provisions to which this Article applies requires any person to disclose the information, and
- (b) no person shall disclose the information in any proceedings in any court or tribunal relating to any of those provisions.

(2) This Article applies to—

- (a) Part III, so far as it relates to employment particulars,
- (b) in Part VI, [F1 Articles [F2 67M] 68, 68A [F3], 70 and 70C] and Articles 71 and 72 so far as relating to those Articles,
- (c) in Part VII, Articles [F3 83 to 85B] and 89 to 91,
- (d) in Part VIII, Articles 98 to 100, and Articles 101 and 102 so far as relating to those Articles,
- (e) Part IX,
- (f) in Part X, Articles 124 and 125 where they apply by virtue of Article 124(4),
- (g) Part XI so far as relating to a dismissal which is treated as unfair—
  - [F3(i) by Article [F2 130B] 131, 132, 132A(d) or 134, or by Article 135 in its application in relation to time of under Article 85A,]
  - (ii) by paragraph (1) of Article 137 by reason of the application of paragraph [F2 (2A)], (3) or (5) of that Article, [F1 or by reason of the application of paragraph (3A) of that Article in so far as it applies where the reason (or, if more than one, the principal reason) for which an employee was selected for dismissal was that specified in Article 132A(d)] and
- (h) Part I, this Part and Part XVI (so far as relating to any of the provisions in sub-paragraphs (a) to (g)).

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**F2** 2004 NI 19

**F3** 1999 NI 9

### *Contracting out etc. and remedies*

#### **Restrictions on contracting out**

**245.**—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order, or
- (b) to preclude a person from bringing any proceedings under this Order before an industrial tribunal.

(2) Paragraph (1)—

- (a) does not apply to any provision in a collective agreement excluding rights under Article 60 if an order under Article 67 is for the time being in force in respect of it,
- (b) does not apply to any provision in a dismissal procedures agreement excluding the right under Article 126 if that provision is not to have effect unless an order under Article 142 is for the time being in force in respect of it,
- (c) does not apply to any provision in an agreement if an order under Article 192 is for the time being in force in respect of it,

*Sub#para. (d) rep. by SR 2002/298*

- (e) does not apply to any agreement to refrain from instituting or continuing proceedings where the Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996, and
- (f) does not apply to any agreement to refrain from instituting or continuing<sup>F4</sup>. . . any proceedings within<sup>F5</sup> the following provisions of Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (cases where conciliation available)—
  - (i) sub-paragraph (c) (proceedings under this Order);
  - (ii) sub-paragraph (i) (proceedings arising out of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002;
  - (iii) sub-paragraph (j) (proceedings under those Regulations);]
 if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement, and

- (g) does not apply to any provision of a collective agreement excluding rights under Part XIII if an order under Article 226 is in force in respect of it.

(3) For the purposes of paragraph (2)(f) the conditions regulating compromise agreements under this Order are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular<sup>F4</sup> proceedings],
- (c) the employee or worker must have received<sup>F4</sup> advice from a relevant independent advisor] as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal.
- (d) there must be in force, when the adviser gives the advice, a<sup>F4</sup> contract of insurance, or an indemnity provided for members of a profession or professional body,] covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice,

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- (e) the agreement must identify the adviser, and
- (f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.

[<sup>F4</sup>(3A) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is a qualified lawyer;
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department.

(3B) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the employee or worker—

- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
- (b) in the case of a person within paragraph (3A)(b) or (c), if the trade union or advice centre is the employer or an associated employer,
- (c) in the case of a person within paragraph (3A)(c), if the employee or worker makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (3A)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4) In paragraph (3A)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.]

[<sup>F4</sup>(5) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of paragraph (2)(e) and (f) as being an agreement to refrain from instituting or continuing proceedings if—
  - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992, and
  - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded as neither being nor including such an agreement in any other case.]

**F4** 1998 NI 8

**F5** SR 2002/298

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

- C1** Art. 245 applied (with modifications) (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 18, **Sch. 1 para. 11** (with reg. 21(1), Sch. 1 para. 3)
- C2** Art. 245 applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 18**
- C3** Art. 245 applied (5.12.2011) by [Agency Workers Regulations \(Northern Ireland\) 2011 \(S.R. 2011/350\)](#), **reg. 15**

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## Law governing employment

**246.**—(1) For the purposes of this Order it is immaterial whether the law which (apart from this Order) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

*Para. (2) rep. by 1999 NI 9*

## Remedy for infringement of certain rights

**247.**—(1) The remedy of an employee for infringement of any of the rights conferred by Article 40, Parts V to IX, Article 124, Part XI, Part XIII and Part XIV is, where provision is made for a complaint or the reference of a question to an industrial tribunal, by way of such a complaint or reference and not otherwise.

[<sup>F6</sup>(1ZA) In relation to the right conferred by Article 68A, the reference in paragraph (1) to an employee has effect as a reference to a worker.]

[<sup>F7</sup>(1A) In relation to the right conferred by Article 70B, the reference in paragraph (1) to an employee has effect as a reference to a worker.]

(2) The remedy of a worker in respect of any contravention of Article 45, 47, 50(1) or 53(1) is by way of a complaint under Article 55 and not otherwise.

[<sup>F8</sup>(2A) The remedy of a person for infringement of the right conferred on him by Article 73 is by way of a complaint under Article 74 and not otherwise.]

[<sup>F8</sup>(2B) The remedy of a person for infringement of the right conferred on him by Article 77A or Article 77B is by way of a complaint under that Article and not otherwise.]

(3) The remedy of a person for conduct which is unlawful by virtue of Part II is by way of a complaint to an industrial tribunal in accordance with that Part, and not otherwise.

No other legal liability arises by reason that conduct is unlawful by virtue of that Part.

**F6** SR 1998/386

**F7** 1998 NI 17

**F8** 2004 NI 19

### Modifications etc. (not altering text)

**C4** Art. 247(1) applied (6.4.2006) by virtue of [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 16(1), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)

**C5** Art. 247(1) applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 16(1)**

## *General provisions about death of employer or employee*

### Institution or continuance of tribunal proceedings

**248.**—(1) Where an employer has died, any tribunal proceedings arising under any of the provisions of this Order to which this Article applies may be defended by a personal representative of the deceased employer.

(2) This Article and Article 249 apply to—

- (a) Part III, so far as it relates to itemised pay statements,
- (b) Part V,
- (c) Part VI,

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- (d) Part VII, apart from Articles 86 to 88,
- (e) Parts VIII and IX,
- (f) in Part X, Articles 124 and 125, and
- (g) Parts XI to XIV.

(3) Where an employee<sup>F9</sup> or worker] has died, any tribunal proceedings arising under any of the provisions of this Order to which this Article applies may be instituted or continued by a personal representative of the deceased employee<sup>F9</sup> or worker].

(4) If there is no personal representative of a deceased employee<sup>F9</sup> or worker], any tribunal proceedings arising under any of the provisions of this Order to which this Article applies may be instituted or continued on behalf of the estate of the deceased employee<sup>F9</sup> or worker] by any appropriate person appointed by the industrial tribunal.

(5) In paragraph (4) “appropriate person” means a person who is—

- (a) authorised by the employee<sup>F9</sup> or worker] before his death to act in connection with the proceedings, or
- (b) the<sup>F10</sup> surviving spouse, surviving civil partner], child, parent or brother or sister of the deceased employee<sup>F9</sup> or worker];

and in Part XII and the following provisions of this Article and Article 249 references to a personal representative include a person appointed under paragraph (4).

(6) In a case where proceedings are instituted or continued by virtue of paragraph (4), any award made by the industrial tribunal shall be—

- (a) made in such terms, and
- (b) enforceable in such manner,

as the Department may by regulations provide.

(7) Any reference in the provisions of this Order to which this Article applies to the doing of anything by or in relation to an employer or employee<sup>F9</sup> or worker] includes a reference to the doing of the thing by or in relation to a personal representative of the deceased employer or employee<sup>F9</sup> or worker].

(8) Any reference in the provisions of this Order to which this Article applies to a thing required or authorised to be done by or in relation to an employer or employee<sup>F9</sup> or worker] includes a reference to a thing required or authorised to be done by or in relation to a personal representative of the deceased employer or employee<sup>F9</sup> or worker].

(9) Paragraphs (7) and (8) do not prevent a reference to a successor of an employer including a personal representative of a deceased employer.

**F9** 2004 NI 19  
**F10** 2004 c.33

### **Rights and liabilities accruing after death**

**249.**—(1) Any right arising under any of the provisions of this Order to which this Article applies which accrues after the death of an employee<sup>F11</sup> or worker] devolves as if it had accrued before his death.

(2) Where an industrial tribunal determines under any provision of Part XII that an employer is liable to pay to a personal representative of a deceased employee—

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- (a) the whole of a redundancy payment to which he would have been entitled but for some provision of Part XII or Article 248, or
  - (b) such part of such a redundancy payment as the tribunal thinks fit,
- the reference in paragraph (1) to a right includes any right to receive it.

(3) Where—

- (a) by virtue of any of the provisions to which this Article applies a personal representative is liable to pay any amount, and
- (b) the liability has not accrued before the death of the employer,

it shall be treated as a liability of the deceased employer which had accrued immediately before his death.

**F11** 2004 NI 19

VALID FROM 18/04/2011

**[<sup>F12</sup>Time limits in relation to certain mediated cross-border disputes**

**249A.**—(1) Paragraph (2) applies where—

- (a) there is mediation in relation to a relevant cross border dispute giving rise to a reference or complaint to an industrial tribunal under this Order; and
- (b) the fixed period of time specified by this Order for the making of that reference or complaint (“the limitation period”) would, apart from this Article, expire—
  - (i) in the period of 8 weeks after the date on which the mediation ends;
  - (ii) on the date on which the mediation ends; or
  - (iii) after the date on which all of the parties to the dispute agree to participate in the mediation but before the date on which the mediation ends.

(2) Where this paragraph applies, the limitation period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(3) For the purposes of paragraph (1) and (2), a mediation in relation to a relevant cross-border dispute ends on the date of the first of these to occur—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party notifies all of the other parties of that party's withdrawal,
- (d) a period of 14 days expires after a request made by one party to another party for confirmation of whether the other party has withdrawn and the other party does not respond in that period, or
- (e) a period of 14 days expires after the date on which the mediator's tenure ends (by reason of death, resignation or otherwise) and a replacement mediator has not been appointed in that period.

(4) In this Article—

“the Directive” means Directive [2008/52/EC](#) of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

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“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive.]

**F12** Art. 249A inserted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), reg. 11(2) (with reg. 1(2))

### *Modifications of Order*

#### **Powers to amend Order**

**250.**—(1) The Department may by order—

- (a) provide that any provision of this Order which is specified in the order shall not apply to persons, or to employments, of such classes as may be prescribed in the order,
- (b) provide that any provision of this Order shall apply to persons or employments of such classes as may be prescribed in the order subject to such exceptions and modifications as may be so prescribed, or
- (c) vary, or exclude the operation of, any of the provisions to which this sub-paragraph applies.

(2) Paragraph (1)(c) applies to Articles 61(2), 97(2), 118(5), 124(3), 140(1), 141(1), 194, 195(1), 239<sup>F13</sup>. . . , Article 241(2) and 242(1), (2), (4) and (5).

*Paras. (3), (4) rep. by 1999 NI 9*

(5) The provisions of this Article are without prejudice to any other power of the Department to amend, vary or repeal any provision of this Order or to extend or restrict its operation in relation to any person or employment.

**F13** 1999 NI 9

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