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STATUTORY INSTRUMENTS

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**1999 No. 2790 (N.I. 9)**

**The Employment Relations (Northern Ireland) Order 1999 <sup>F1</sup>**

- - - - - 12th October 1999

**F1** functions transf. by SR 1999/481

*Introduction*

**Title and commencement**

- 1.—(1) This Order may be cited as the Employment Relations (Northern Ireland) Order 1999.  
(2) This Order shall come into operation on such day or days as the Department may by order appoint<sup>F2</sup>.

**F2** partly exercised by SRs 1999/470; 2000/5, 122, 373; 2002/214, 317; 2003/332; 2005/394

**Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.  
(2) In this Order—  
“the Department” means the Department of Economic Development;  
“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996;  
“the Trade Union and Labour Relations Order” means the Trade Union and Labour Relations (Northern Ireland) Order 1995.

*Trade Unions*

**Collective bargaining: recognition**

- 3.—(1) The Trade Union and Labour Relations Order shall be amended as follows.  
(2) After Part IV there shall be inserted—

## “PART IVA

### COLLECTIVE BARGAINING: RECOGNITION

#### **Recognition of trade unions**

**44A.** Schedule 1A shall have effect.” .

(3) Immediately before Schedule 2 there shall be inserted the Schedule set out in Schedule 1 to this Order.

#### **Detriment related to trade union membership**

4. Schedule 2 shall have effect.

#### **Blacklists**

5.—(1) The Department may make regulations prohibiting the compilation of lists which—

- (a) contain details of members of trade unions or persons who have taken part in the activities of trade unions; and
- (b) are compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.

(2) The Department may make regulations prohibiting—

- (a) the use of lists to which paragraph (1) applies;
- (b) the sale or supply of lists to which paragraph (1) applies.

(3) Regulations under this Article may, in particular—

- (a) confer jurisdiction (including exclusive jurisdiction) on industrial tribunals;
- (b) include provision for or about the grant and enforcement of specified remedies by courts and tribunals;
- (c) include provision for the making of awards of compensation calculated in accordance with the regulations;
- (d) include provision permitting proceedings to be brought by trade unions on behalf of members in specified circumstances;
- (e) include provision about cases where an employee is dismissed by his employer and the reason or principal reason for the dismissal, or why the employee was selected for dismissal, relates to a list to which paragraph (1) applies;
- (f) create criminal offences;
- (g) in specified cases or circumstances, extend liability for a criminal offence created under sub-paragraph (f) to a person who aids the commission of the offence or to a person who is an agent, principal, employee, employer or officer of a person who commits the offence;
- (h) provide for specified obligations or offences not to apply in specified circumstances;
- (i) include consequential provision, including provision amending a statutory provision.

(4) Regulations under this Article creating an offence may not provide for it to be punishable—

- (a) by imprisonment;
- (b) by a fine in excess of level 5 on the standard scale in the case of an offence triable only summarily; or

- (c) by a fine in excess of the statutory maximum in the case of summary conviction for an offence triable either on indictment or summarily.
- (5) In this Article—
  - “list” includes any index or other set of items whether recorded electronically or by any other means; and
  - “worker” has the meaning given by Article 15.
- (6) Subject to paragraph (5), expressions used in this Article and in the Trade Union and Labour Relations Order have the same meaning in this Article as in that Order.

### **Ballots and notices**

- 6. Schedule 3 shall have effect.

### **Training**

- 7.—(1) In Part IVA of the Trade Union and Labour Relations Order (collective bargaining: recognition) as inserted by Article 3, there shall be inserted after Article 44A—

#### **“Training**

- 44B.**—(1) This Article applies where—
  - (a) a trade union is recognised, in accordance with Schedule 1A, as entitled to conduct collective bargaining on behalf of a bargaining unit (within the meaning of Part I of that Schedule), and
  - (b) a method for the conduct of collective bargaining is specified by the Industrial Court under paragraph 31(3) of that Schedule (and is not the subject of an agreement under paragraph 31(5)(a) or (b)).
- (2) The employer must from time to time invite the trade union to send representatives to a meeting for the purpose of—
  - (a) consulting about the employer's policy on training for workers within the bargaining unit,
  - (b) consulting about his plans for training for those workers during the period of six months starting with the day of the meeting, and
  - (c) reporting about training provided for those workers since the previous meeting.
- (3) The date set for a meeting under paragraph (2) must not be later than—
  - (a) in the case of a first meeting, the end of the period of six months starting with the day on which this Article first applies in relation to a bargaining unit, and
  - (b) in the case of each subsequent meeting, the end of the period of six months starting with the day of the previous meeting.
- (4) The employer shall, before the period of two weeks ending with the date of a meeting, provide to the trade union any information—
  - (a) without which the union's representatives would be to a material extent impeded in participating in the meeting, and
  - (b) which it would be in accordance with good industrial relations practice to disclose for the purposes of the meeting.
- (5) Article 40(1) of the 1992 Order shall apply in relation to the provision of information under paragraph (4) as it applies in relation to the disclosure of information under Article 39 of that Order.

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(6) The employer shall take account of any written representations about matters raised at a meeting which he receives from the trade union within the period of four weeks starting with the date of the meeting.

(7) Where more than one trade union is recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, a reference in this Article to “the trade union” is a reference to each trade union.

(8) Where at a meeting under this Article (Meeting 1) an employer indicates his intention to convene a subsequent meeting (Meeting 2) before the expiry of the period of six months beginning with the date of Meeting 1, for the reference to a period of six months in paragraph (2)(b) there shall be substituted a reference to the expected period between Meeting 1 and Meeting 2.

(9) The Department may by order amend any of paragraphs (2) to (6).

(10) No order shall be made under paragraph (9) unless a draft has been laid before, and approved by resolution of, the Assembly.

#### **Article 44B: complaint to industrial tribunal**

**44C.**—(1) A trade union may present a complaint to an industrial tribunal that an employer has failed to comply with his obligations under Article 44B in relation to a bargaining unit.

(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 alleged failure, 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.

(3) Where an industrial tribunal finds a complaint under this Article well-founded it—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to each person who was, at the time when the failure occurred, a member of the bargaining unit.

(4) The amount of the award shall not, in relation to each person, exceed two weeks' pay.

(5) For the purpose of paragraph (4) a week's pay—

- (a) shall be calculated in accordance with Chapter IV of Part I of the Employment Rights Order (taking the date of the employer's failure as the calculation date), and
- (b) shall be subject to the limit in Article 23(1) of that Order.

(6) Proceedings for enforcement of an award of compensation under this Article—

- (a) may, in relation to each person to whom compensation is payable, be commenced by that person, and
- (b) may not be commenced by a trade union.”.

(2) In Article 149(2) of the Trade Union and Labour Relations Order after “1(2),” there shall be inserted “ 44B(9), ”.

#### **Unfair dismissal connected with recognition: interim relief**

**8.** In Articles 163(1)(b) and 164(1) of the Employment Rights Order (interim relief) after “136(1)” there shall be inserted “or in paragraph 161(2) of Schedule 1A to the Trade Union and Labour Relations Order”.

*Leave for family reasons, etc.*

### **Maternity and parental leave**

9. The provisions set out in Part I of Schedule 4 shall be substituted for Part IX of the Employment Rights Order.

### **Time-off for dependants**

10. The provisions set out in Part II of Schedule 4 shall be inserted after Article 85 of the Employment Rights Order.

### **Consequential amendments**

11. Part III of Schedule 4 (which makes amendments consequential on Articles 9 and 10) shall have effect.

*Disciplinary and grievance hearings*

### **Right to be accompanied**

12.—(1) This Article applies where a worker—

- (a) is required or invited by his employer to attend a disciplinary or grievance hearing, and
- (b) reasonably requests to be accompanied at the hearing.

[<sup>F3</sup>(2A) Where this Article applies, the employer must permit the worker to be accompanied at the hearing by one companion who—

- (a) is chosen by the worker; and
- (b) is within paragraph (3).

(2B) The employer must permit the worker's companion to—

- (a) address the hearing in order to do any or all of the following—
  - (i) put the worker's case;
  - (ii) sum up that case;
  - (iii) respond on the worker's behalf to any view expressed at the hearing;
- (b) confer with the worker during the hearing.

(2C) Paragraph (2B) does not require the employer to permit the worker's companion to—

- (a) answer questions on behalf of the worker;
- (b) address the hearing if the worker indicates at it that he does not wish his companion to do so; or
- (c) use the powers conferred by that paragraph in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.]

(3) A person is within this paragraph if he is—

- (a) employed by a trade union of which he is an official within the meaning of the Trade Union and Labour Relations Order,
- (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or

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- (c) another of the employer's workers.
- (4) If—
  - (a) a worker has a right under this Article to be accompanied at a hearing,
  - (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and
  - (c) the worker proposes an alternative time which satisfies paragraph (5),
 the employer must postpone the hearing to the time proposed by the worker.
- (5) An alternative time must—
  - (a) be reasonable, and
  - (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer.
- (6) An employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers in accordance with a request under paragraph (1) (b).
- (7) Articles 92(3) and (4), 93, 95 and 247(1) of the Employment Rights Order (time off for carrying out trade union duties) shall apply in relation to paragraph (6) as they apply in relation to Article 92(1) of that Order.

**F3** 2004 NI 19

### **Complaint to industrial tribunal**

- 13.**—(1) A worker may present a complaint to an industrial tribunal that his employer has failed, or threatened to fail, to comply with Article<sup>F4</sup> 12(2A), (2B)] or (4).
- (2) A tribunal shall not consider a complaint under this Article in relation to a failure or threat unless the complaint is presented—
- (a) before the end of the period of three months beginning with the date of the failure or threat, 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.
- (3) Where a tribunal finds that a complaint under this Article is well-founded it shall order the employer to pay compensation to the worker of an amount not exceeding two weeks' pay.
- (4) Chapter IV of Part I of the Employment Rights Order (calculation of a week's pay) shall apply for the purposes of paragraph (3); and in applying that Chapter the calculation date shall be taken to be—
- (a) in the case of a claim which is made in the course of a claim for unfair dismissal, the date on which the employer's notice of dismissal was given or, if there was no notice, the effective date of termination, and
  - (b) in any other case, the date on which the relevant hearing took place (or was to have taken place).
- (5) The limit in Article 23(1) of the Employment Rights Order (maximum amount of week's pay) shall apply for the purposes of paragraph (3).
- Para. (6) rep. by 2003 NI 15*

F4 2004 NI 19

### Detriment and dismissal

14.—(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 he—

- (a) exercised or sought to exercise the right under Article<sup>[F5]</sup> 12(2A), (2B)] or (4), or
- (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that Article.

(2) Article 71 of the Employment Rights Order shall apply in relation to contraventions of paragraph (1) as it applies in relation to contraventions of certain Articles of that Order.

(3) A worker who is dismissed shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he—

- (a) exercised or sought to exercise the right under Article<sup>[F5]</sup> 12(2A), (2B)] or (4), or
- (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that Article.

(4) Articles 140 and 141 of that Order (qualifying period of employment and upper age limit) shall not apply in relation to paragraph (3).

(5) Articles 163 to 167 of that Order (interim relief) shall apply in relation to dismissal for the reason specified in paragraph (3)(a) or (b) as they apply in relation to dismissal for a reason specified in Article 163(1)(b) of that Order.

(6) In the application of Chapter II of Part XI of that Order in relation to paragraph (3), a reference to an employee shall be taken as a reference to a worker.

<sup>[F5]</sup>(7) References in this Article to a worker having accompanied or sought to accompany another worker include references to his having exercised or sought to exercise any of the powers conferred by Article 12(2A) or (2B).]

F5 2004 NI 19

### Interpretation

15.—(1) In Articles 12 to 14 and this Article “worker” means an individual who is—

- (a) a worker within the meaning of Article 3(3) of the Employment Rights Order,
- (b) an agency worker,
- (c) a home worker, or
- (d) a person in Crown employment within the meaning of Article 236 of that Order, other than a member of the naval, military, air or reserve forces of the Crown.

(2) In paragraph (1) “agency worker” means an individual who—

- (a) is supplied by a person ( “the agent”) to do work for another ( “the principal”) by arrangement between the agent and the principal,
- (b) is not a party to a worker's contract, within the meaning of Article 3(3) of that Order, relating to that work, and

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(c) is not a party to a contract relating to that work under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any professional or business undertaking carried on by the individual; and, for the purposes of Articles 12 to 14, both the agent and the principal are employers of an agency worker.

(3) In paragraph (1) “home worker” means an individual who—

- (a) contracts with a person, for the purposes of the person's business, for the execution of work to be done in a place not under the person's control or management, and
- (b) is not a party to a contract relating to that work under which the work is to be executed for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any professional or business undertaking carried on by the individual;

and, for the purposes of Articles 12 to 14, the person mentioned in sub-paragraph (a) is the home worker's employer.

(4) For the purposes of Article 12 a disciplinary hearing is a hearing which could result in—

- (a) the administration of a formal warning to a worker by his employer,
- (b) the taking of some other action in respect of a worker by his employer, or
- (c) the confirmation of a warning issued or some other action taken.

(5) For the purposes of Article 12 a grievance hearing is a hearing which concerns the performance of a duty by an employer in relation to a worker.

(6) For the purposes of Article 12(5)(b) a working day is a day other than—

- (a) a Saturday or a Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland.

### **Contracting out and conciliation**

**16.** Articles 12 to 15 shall be treated as provisions of Chapter I of Part VI of the Employment Rights Order for the purposes of—

- (a) Article 245(1), (2)(e) and (f) and (3) to (5) of that Order (restrictions on contracting out); and
- (b) Article 20(1)(c) of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation).

### **National security employees**

**17.** Articles 12 to 15 shall not apply in relation to a person employed for the purposes of—

- (a) the Security Service; or
- (b) the Secret Intelligence Service.

### *Other rights of individuals*

### **Unfair dismissal of striking workers**

**18.** Schedule 5 shall have effect.

*Art. 19 rep. by 2004 NI 19*

### **Agreement to exclude dismissal rights**

**20.**—(1) In Article 240 of the Employment Rights Order (fixed-term contracts) paragraph (1) (agreement to exclude unfair dismissal provisions) shall be omitted; and paragraphs (2) to (5) shall have effect in consequence.

(2) In Articles 68(4), 69(2), 70(2), 70A(2) and 70B(2) of that Order—

(a) the words from the beginning to “the dismissal,” shall be omitted, and

(b) for “that Part” there shall be substituted “Part XI”.

(3) In Article 68A(4) of that Order the words from “, unless” to the end shall be omitted.

(4) In Schedule 2 to the Shops (Sunday Trading &.) (Northern Ireland) Order 1997, paragraph 11(5) shall be omitted.

(5) In—

(a) section 23(4) of the National Minimum Wage Act 1998; and  
*Sub#para. (b) rep. by 2002 c. 21*

the words from “except” to the end shall be omitted.

*Para.(6) rep. by 1999 NI 9*

### **Part-time work: discrimination**

**21.**—(1) The Department shall make regulations for the purpose of securing that persons in part-time employment are treated, for such purposes and to such extent as the regulations may specify, no less favourably than persons in full-time employment.

(2) The regulations may—

(a) specify classes of person who are to be taken to be, or not to be, in part-time employment;

(b) specify classes of person who are to be taken to be, or not to be, in full-time employment;

(c) specify circumstances in which persons in part-time employment are to be taken to be, or not to be, treated less favourably than persons in full-time employment;

(d) make provision which has effect in relation to persons in part-time employment generally or provision which has effect only in relation to specified classes of persons in part-time employment.

(3) The regulations may—

(a) confer jurisdiction (including exclusive jurisdiction) on industrial tribunals;

(b) create criminal offences in relation to specified acts or omissions by an employer, by an organisation of employers, by an organisation of workers or by an organisation existing for the purposes of a profession or trade carried on by the organisation's members;

(c) in specified cases or circumstances, extend liability for a criminal offence created under sub-paragraph (b) to a person who aids the commission of the offence or to a person who is an agent, principal, employee, employer or officer of a person who commits the offence;

(d) provide for specified obligations or offences not to apply in specified circumstances;

(e) make provision about notices or information to be given, evidence to be produced and other procedures to be followed;

(f) amend, apply with or without modifications, or make provision similar to any provision of the Employment Rights Order (including, in particular, Parts VI, XI and XV) or the Trade Union and Labour Relations Order;

(g) provide for the provisions of specified agreements to have effect in place of provisions of the regulations to such extent and in such circumstances as may be specified;

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- (h) include consequential provision, including provision amending a statutory provision.
- (4) Without prejudice to the generality of this Article the regulations may make any provision which appears to the Department to be necessary or expedient—
  - (a) for the purpose of implementing Council Directive [97/81/EC](#) on the framework agreement on part-time work in its application to terms and conditions of employment;
  - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive;
  - (c) for the purpose of any matter dealt with by the framework agreement or for the purpose of applying the provisions of the framework agreement to any matter relating to part-time workers.
- (5) Regulations under this Article which create an offence—
  - (a) shall provide for it to be triable summarily only, and
  - (b) may not provide for it to be punishable by imprisonment or by a fine in excess of level 5 on the standard scale.

#### **Part-time work: code of practice**

- 22.**—(1) The Department may issue codes of practice containing guidance for the purpose of—
- (a) eliminating discrimination in the field of employment against part-time workers;
  - (b) facilitating the development of opportunities for part-time work;
  - (c) facilitating the flexible organisation of working time taking into account the needs of workers and employers;
  - (d) any matter dealt with in the framework agreement on part-time work annexed to Council Directive [97/81/EC](#).
- (2) The Department may revise a code and issue the whole or part of the revised code.
- (3) A person's failure to observe a provision of a code does not make him liable to any proceedings.
- (4) A code—
- (a) is admissible in evidence in proceedings before an industrial tribunal, and
  - (b) shall be taken into account by an industrial tribunal in any case in which it appears to the tribunal to be relevant.

#### **Code of practice: supplemental**

- 23.**—(1) Before issuing or revising a code of practice under Article 22 the Department shall consult such persons as it considers appropriate.
- (2) Before issuing a code the Department shall—
- (a) publish a draft code,
  - (b) consider any representations made to it about the draft,
  - (c) if the Department thinks it appropriate, modify the draft in the light of any representations made to it.
- (3) If, having followed the procedure under paragraph (2), the Department decides to issue a code, the Department shall lay a draft code before the Assembly.
- (4) If the draft code is approved by resolution of the Assembly, the Department shall issue the code in the form of the draft.

- (5) In this Article and Article 22(3) and (4)—
- (a) a reference to a code includes a reference to a revised code,
  - (b) a reference to a draft code includes a reference to a draft revision, and
  - (c) a reference to issuing a code includes a reference to issuing part of a revised code.

### **Power to confer rights on individuals**

**24.**—(1) This Article applies to any right conferred on an individual against an employer (however defined) under any of the following—

- (a) the Industrial Relations (Northern Ireland) Order 1992;
  - (b) the Trade Union and Labour Relations Order;
  - (c) the Employment Rights Order;
  - (d) [<sup>F6</sup>the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 or] the Shops (Sunday Trading &.) (Northern Ireland) Order 1997;
  - (e) this Order;
  - (f) any instrument made under section 2(2) of the European Communities Act 1972.
- [<sup>F7</sup>(g) the Employment (Northern Ireland) Order 2002.]
- [<sup>F8</sup>(h) the Employment (Northern Ireland) Order 2003.]

(2) The Department may by order make provision which has the effect of conferring any such right on individuals who are of a specified description.

(3) The reference in paragraph (2) to individuals includes a reference to individuals expressly excluded from exercising the right.

- (4) An order under this Article may—
- (a) provide that individuals are to be treated as parties to workers' contracts or contracts of employment;
  - (b) make provision as to who are to be regarded as the employers of individuals;
  - (c) make provision which has the effect of modifying the operation of any right as conferred on individuals by the order;
  - (d) include such consequential provisions as the Department thinks fit.

(5) An order under this Article may make provision in such way as the Department thinks fit, [<sup>F9</sup>including, in particular, amending, excluding or applying (with or without amendment) any statutory provision.]

(6) Article 250(4) of the Employment Rights Order (which is superseded by this Article) shall be omitted.

(7) Any order made or having effect as if made under Article 250(4), so far as effective immediately before the coming into operation of this Article, shall have effect as if made under this Article.

<b>F6</b>	2004 NI 1
<b>F7</b>	2002 NI 2
<b>F8</b>	2003 NI 15
<b>F9</b>	2004 NI 19

*The Industrial Court, the Agency, Commissioners and Certification Officer*

**The Industrial Court**

25. For Articles 91 and 92 of the Industrial Relations (Northern Ireland) Order 1992 there shall be substituted—

**“The Industrial Court**

91.—(1) There shall continue to be a body called the Industrial Court.

(2) The functions of the Court shall be performed on behalf of the Crown, but the Court shall not be subject to directions of any kind from any Minister of the Crown or Northern Ireland department as to the manner in which it is to exercise any of its functions.

**The members of the Court**

91A.—(1) The Industrial Court shall consist of members appointed by the Department.

(2) The Department shall appoint a member as chairman, and may appoint a member as deputy chairman or members as deputy chairmen.

(3) The Department may appoint as members only persons experienced in industrial relations, and they shall include some persons whose experience is as representatives of employers and some whose experience is as representatives of workers.

(4) Before making an appointment under paragraph (1) or (2) the Department shall consult the Agency and may consult other persons.

(5) At any time when the chairman of the Industrial Court is absent or otherwise incapable of acting, or there is a vacancy in the office of chairman, and the Court has a deputy chairman or deputy chairmen—

(a) the deputy chairman, if there is only one, or

(b) if there is more than one, such of the deputy chairmen as they may agree or in default of agreement as the Department may direct,

may perform any of the functions of chairman of the Court.

(6) At any time when every person who is chairman or deputy chairman is absent or otherwise incapable of acting, or there is no such person, such member of the Court as the Department may direct may perform any of the functions of the chairman of the Court.

(7) The members of the Court shall hold and vacate office in accordance with their terms of appointment.

(8) The Department shall pay to the members of the Court such remuneration and such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel and may pay to any other persons such allowances as the Department may, with the approval of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at proceedings of the Court.

**Proceedings of the Court**

92.—(1) For the purposes of discharging any of its functions, the Court shall consist of such of the members of the Court as the chairman may direct.

(2) If in any case the Court cannot reach a unanimous decision on its award, the chairman shall decide the matter acting with the full powers of an umpire.

(3) The Department may make, or authorise the Industrial Court to make, rules regulating the procedure of the Court and such rules may provide—

- (a) for references in certain cases to a single member of the court;
- (b) for the Court to sit in two or more divisions;
- (c) for the Court to sit with assessors;
- (d) for the Court, or any division of the Court, to act notwithstanding any vacancy in its number;
- (e) for enabling questions as to the interpretation of any award to be settled without any fresh reference;
- (f) for the cases in which persons may appear by counsel or solicitor in proceedings before the Court.

(4) Except as provided by rules under paragraph (3)(f), no person shall be entitled to appear in any proceedings before the Court by counsel or solicitor.

(5) Where any trade dispute referred to the Court under Article 84(2)(e) involves questions as to wages or as to hours of work or otherwise as to the terms and conditions of or affecting employment which are regulated by any statutory provision, the Court shall not make any award which is inconsistent with that statutory provision.

(6) Subject to paragraphs (1) to (5), the Court shall determine its own procedure.

(7) The Arbitration Act (Northern Ireland) 1937 shall not apply to any proceedings before the Court.

(8) In relation to the discharge of the Court's functions under Schedule 1A to the Trade Union and Labour Relations Order—

- (a) Article 92A and paragraph (7) shall apply; and
- (b) paragraphs (1) to (6) shall not apply.

### **Proceedings of the Court under Schedule 1A to the Trade Union and Labour Relations Order**

**92A.**—(1) For the purpose of discharging its functions under Schedule 1A to the Trade Union and Labour Relations Order in any particular case, the Industrial Court shall consist of a panel established under this Article.

(2) The chairman of the Court shall establish a panel or panels, and a panel shall consist of these three persons appointed by him—

- (a) the chairman or a deputy chairman of the Court, who shall be chairman of the panel;
- (b) a member of the Court whose experience is as a representative of employers;
- (c) a member of the Court whose experience is as a representative of workers.

(3) The chairman of the Court shall decide which panel is to deal with a particular case.

(4) A panel may at the discretion of its chairman sit in private where it appears expedient to do so.

(5) If—

- (a) a panel cannot reach a unanimous decision on a question arising before it, and
- (b) a majority of the panel have the same opinion,

the question shall be decided according to that opinion.

(6) If—

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(a) a panel cannot reach a unanimous decision on a question arising before it, and  
 (b) a majority of the panel do not have the same opinion,  
 the chairman of the panel shall decide the question acting with the full powers of an umpire.

(7) The Department may make, or authorise the Court to make, rules regulating the procedure of the Court in discharging its functions under Schedule 1A to the Trade Union and Labour Relations Order.

(8) Subject to the above provisions, a panel shall determine its own procedure.

(9) The Court may correct in any decision or declaration of the Court under Schedule 1A to the Trade Union and Labour Relations Order any clerical mistake or error arising from an accidental slip or omission.

(10) If any question arises as to the interpretation of a decision or declaration of the Court under that Schedule any party may apply to the Court for a decision; and the Court shall decide the question after hearing the parties or, if the parties consent, without a hearing and shall notify the parties.”.

### **The Agency: general duty**

**26.** In Article 83(1) of the Industrial Relations (Northern Ireland) Order 1992 (general duty of the Agency) the words from “, in particular” to the end shall be omitted.

### **Abolition of Commissioners**

**27.—**(1) These offices shall cease to exist—

- (a) the office of Northern Ireland Commissioner for the Rights of Trade Union Members;
- (b) the office of Northern Ireland Commissioner for Protection Against Unlawful Industrial Action.

(2) In the Trade Union and Labour Relations Order these provisions shall cease to have effect—

- (a) Part VII (provision by the Northern Ireland Commissioner for the Rights of Trade Union Members of assistance in relation to certain proceedings);
- (b) Articles 121 and 122 (provision of assistance by Northern Ireland Commissioner for Protection Against Unlawful Industrial Action in relation to certain proceedings);
- (c) Part IX (Commissioners' appointment, remuneration, staff, reports, accounts, etc.).

(3) In Article 11A of the Industrial Relations (Northern Ireland) Order 1992 (statement to members of union following annual return) in the third paragraph of paragraph (6)(a) (application for assistance from the Northern Ireland Commissioner for the Rights of Trade Union Members) for the words from “may” to “case,” there shall be substituted “should”.

### **The Certification Officer for Northern Ireland**

**28.** Schedule 6 shall have effect.

### *Miscellaneous*

### **Partnerships at work**

**29.—**(1) The Department may spend money or provide money to other persons for the purpose of encouraging and helping employers (or their representatives) and employees (or their representatives) to improve the way they work together.

(2) Money may be provided in such way as the Department thinks fit (whether as grants or otherwise) and on such terms as it thinks fit (whether as to repayment or otherwise).

### **Employment agencies**

**30.** Schedule 7 shall have effect.

### **Employment rights: employment outside Northern Ireland**

**31.**—(1) For Article 239 of the Employment Rights Order substitute—

#### **“Employment outside Northern Ireland**

**239.**—(1) The provisions to which this paragraph applies do not apply to employment where under his contract of employment an employee ordinarily works outside Northern Ireland.

(2) Paragraph (1) applies to—

- (a) Part II;
- (b) Chapter II of Part VI;
- (c) Articles 92 to 95;
- (d) Articles 221 and 222.”.

(2) In Article 242 of that Order (mariners) after paragraph (6) insert—

“(7) The provisions mentioned in paragraph (8) apply to employment on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 if and only if—

- (a) the ship's entry in the register specifies a port in Northern Ireland as the port to which the vessel is to be treated as belonging;
- (b) under his contract of employment the person employed does not work wholly outside Northern Ireland; and
- (c) the person employed is ordinarily resident in Northern Ireland.

(8) The provisions are—

- (a) Articles 40 to 42;
- (b) Parts IV and V and Chapter I of Part VI;
- (c) Part VII, apart from Articles 86 to 88;
- (d) Parts VIII and IX;
- (e) Articles 124 and 125; and
- (f) Part XI.” .

### **Unfair dismissal: special and additional awards**

**32.**—(1) Articles 151(4)(b), 152(2) and (3) and 159 of the Employment Rights Order (which require, or relate to, the making of special awards by industrial tribunals in unfair dismissal cases) shall cease to have effect.

(2) In Article 151(3)(b) of the Employment Rights Order (amount of additional award) for “the appropriate amount” there shall be substituted “an amount not less than twenty-six nor more than fifty-two weeks' pay”; and paragraphs (5) and (6) of Article 151 shall cease to have effect.

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(3) In Article 15 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 paragraph (1) shall cease to have effect.

### **Indexation of amounts, etc.**

**33.**—(1) This Article applies to the sums specified in the following provisions—

- (a) Article 40(6) of the Trade Union and Labour Relations Order (right to membership of trade union: remedies);
- (b) Article 23(1) of the Employment Rights Order (maximum amount of a week's pay for purposes of certain calculations);
- (c) Article 63(1) of that Order (guarantee payments: limits);
- [<sup>F10</sup>(ca) Article 77E(3) of that Order (unlawful inducements: amount of award);]
- (d) Article 154(1) of that Order (unfair dismissal: minimum amount of basic award);
- (e) Article 158(1) of that Order (unfair dismissal: limit of compensatory award);
- (f) Article 231(1)(a) and (b) of that Order (employee's rights on insolvency of employer: maximum amount payable).

(2) If the retail prices index for September of a year is higher or lower than the index for the previous September, the Department shall <sup>F11</sup>... make an order in relation to each sum mentioned in paragraph (1)—

- (a) increasing each sum, if the new index is higher, or
- (b) decreasing each sum, if the new index is lower,

by the same percentage as the amount of the increase or decrease of the index [<sup>F12</sup>and the order shall come into operation on the following 6th April] .

(3)

In making the calculation required by paragraph (2) the Department shall [<sup>F13</sup>round the result to the nearest whole pound, taking 50p as nearest to the next whole pound above] .

(4) For the sum specified in Article 158(1) of the Employment Rights Order (unfair dismissal: limit of compensatory award) there shall be substituted the sum of £50,000 (subject to paragraph (2) above).

(5) In this Article “the retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Office for National Statistics, or
- (b) where that index is not published for a month, any substituted index or figures published by that Office.

(6) An order under [<sup>F14</sup>paragraph (2) ] shall be laid before the Assembly after being made.

[<sup>F15</sup>(7) The Department may at any time make an order increasing or decreasing any sum to which this Article applies if a draft of the order has been laid before, and approved by resolution of, the Assembly.

(8) An order under paragraph (7) may exclude the application of paragraph (2) in relation to any sum increased or decreased by the order for such period as may be specified in the order.]

**F10** 2004 NI 19

**F11** Words in art. 33(2) repealed (30.3.2018) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 22\(2\)\(a\), 29\(2\), Sch. 3; S.R. 2018/79, art. 2](#)

- F12** Words in art. 33(2) added (30.3.2018) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 22\(2\)\(b\), 29\(2\); S.R. 2018/79, art. 2\(1\)](#)
- F13** Words in art. 33(3) substituted (30.3.2018) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 22\(3\), 29\(2\); S.R. 2018/79, art. 2\(1\)](#)
- F14** Words in art. 33(6) substituted (30.3.2018) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 22\(4\), 29\(2\); S.R. 2018/79, art. 2\(1\)](#)
- F15** Art. 33(7)(8) added (30.3.2018) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 22\(5\), 29\(2\); S.R. 2018/79, art. 2\(1\)](#)

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

- C1** Art. 33 power to exclude conferred (1.10.2006) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 10\)\), arts. 1\(3\), 16\(4\) \(with art. 16\(3\)\); S.R. 2006/344, art. 3\(d\)](#)
- C2** Art. 33 restricted (1.10.2009) by [Work and Families \(Increase of Maximum Amount\) Order \(Northern Ireland\) 2009 \(S.R. 2009/317\), art. 3](#)

**Guarantee payments**

**34.** For Article 63(7) of the Employment Rights Order (guarantee payments: limits) there shall be substituted—

- “(7) The Department may by order vary—
- (a) the length of the period specified in paragraph (2);
  - (b) a limit specified in paragraph (3) or (4).” .

**Articles 32 to 34: consequential**

**35.**—(1) Articles 23(2) to (4), 154(2), 158(2) and 231(2) of the Employment Rights Order (which confer power to increase sums) shall cease to have effect.

(2) An increase effected, before Article 33 comes into operation, by virtue of a provision repealed by this Article shall continue to have effect notwithstanding this Article (but subject to Article 33(2) and (4)).

**Compensatory awards, etc.: removal of limits in certain cases**

**36.**—(1) After Article 158(1) of the Employment Rights Order (limit of compensatory award etc.) there shall be inserted—

- “(1A) Paragraph (1) shall not apply to compensation awarded, or a compensatory award made, to a person in a case where he is regarded as unfairly dismissed by virtue of Article 132, 134A, 137(3) or 137(5A).” .

(2) Article 162B of that Order (power to specify method of calculation of compensation where dismissal a result of protected disclosure) shall cease to have effect.

**Transfer of undertakings**

**37.**—(1) This Article applies where regulations under section 2(2) of the European Communities Act 1972 (general implementation of Treaties) make provision for the purpose of implementing, or for a purpose concerning, a Community obligation of the United Kingdom which relates to the treatment of employees on the transfer of an undertaking or business or part of an undertaking or business.

(2) The Department may by regulations make the same or similar provision in relation to the treatment of employees in circumstances other than those to which the Community obligation applies

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(including circumstances in which there is no transfer, or no transfer to which the Community obligation applies).

(3) Regulations under this Article shall be subject to negative resolution.

### **National security**

**38.** Schedule 8 shall have effect.

### *General*

### **Orders and regulations**

**39.**—(1) An order or regulations to which this paragraph applies shall—

- (a) be laid before the Assembly as soon as may be after it is made;
- (b) come into operation on such date as may be specified therein; and
- (c) cease to have effect on the expiration of a period of six months from the date on which it came into operation unless, before the expiration of that period, it is approved by a resolution of the Assembly.

(2) Paragraph (1) applies to—

- (a) regulations under Article 5, 19 or 21;
- (b) an order under Article 24.

(3) Regulations and orders under this Order may contain incidental, supplementary, transitional or saving provisions.

*Article 40—Repeals*

*Schedule 1—Amendments*

*Schedule 2—Amendments*

*Schedule 3—Amendments*

*Schedule 4—Amendments*

*Schedule 5—Amendments*

*Schedule 6—Amendments*

*Schedule 7—Amendments*

*Schedule 8—Amendments*

*Schedule 9—Repeals*

**Status:**

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**Changes to legislation:**

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