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STATUTORY INSTRUMENTS

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**2004 No. 3078**

The Employment Relations (Northern Ireland) Order 2004

PART IV

RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

*Other rights of workers and employers*

**Role of companion at disciplinary or grievance hearings**

**18.**—(1) For paragraph (2) of Article 12 of the [Employment Relations \(Northern Ireland\) Order 1999 \(NI 9\)](#) (duty of employers to permit workers to be accompanied at disciplinary and grievance hearings) substitute—

“(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.”.

(2) In Article 13(1) of that Order (complaint to industrial tribunal), for “12(2)” substitute “12(2A), (2B)”.

(3) In Article 14 of that Order (right not to be subjected to a detriment or dismissal)—

- (a) in paragraphs (1)(a) and (3)(a) for “12(2)” substitute “12(2A), (2B)”; and
- (b) after paragraph (6) add—

“(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).”.

### **Ways in which provision conferring rights on individuals may be made**

**19.** In Article 24 of the [Employment Relations \(Northern Ireland\) Order 1999 \(NI 9\)](#) (power to confer on individuals of a specified description rights conferred by certain statutory provisions) in paragraph (5) (ways in which that power may be exercised) for the words from “whether” to the end substitute “including, in particular, amending, excluding or applying (with or without amendment) any statutory provision.”.

### **Protection of employees in respect of jury service**

**20.**—(1) In Chapter I of Part VI of the Employment Rights Order (protection from suffering detriment in employment), before Article 68 insert—

#### **“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).”.

(2) In Article 71(1) of that Order (application to industrial tribunal), after “Article” insert “67M,”.

(3) After Article 130A of that Order insert—

#### **“Jury service**

**130B.**—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) has been summoned under the [Juries \(Northern Ireland\) Order 1974](#) or the Coroners Act (Northern Ireland) 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) Paragraph (1) does not apply in relation to an employee who is dismissed if the employer shows—

- (a) that the circumstances were such that the employee’s absence in pursuance of being so summoned was likely to cause substantial injury to the employer’s undertaking,

- (b) that the employer brought those circumstances to the attention of the employee,
  - (c) that the employee refused or failed to apply to be excused from attending in pursuance of being so summoned, and
  - (d) that the refusal or failure was not reasonable.”
- (4) In Article 137 of that Order (redundancy), for paragraph (1)(c) substitute—
- “(c) it is shown that any of paragraphs (2A) to (7D) applies.”.
- (5) In that Article, before paragraph (3) insert—
- “(2A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 130B (unless the case is one to which paragraph (2) of that Article applies).”
- (6) In Article 140(3) of that Order (exceptions to one year qualifying period of continuous employment for claims of unfair dismissal), before sub-paragraph (b) insert—
- “(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;”.
- (7) In Article 141(2) of that Order (exceptions to upper age limit for claims of unfair dismissal), before sub-paragraph (b) insert—
- “(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;”.
- (8) In Article 143(2) of that Order (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action) before sub-paragraph (a) insert—
- “(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;”.
- (9) In Article 144(2) of that Order (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (1) of that Article) before sub-paragraph (a) insert—
- “(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;”.

### **Flexible working**

- 21.**—(1) After paragraph (6B) of Article 137 of the Employment Rights Order (unfair dismissal by reason of redundancy) insert—
- “(6C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 135C.”.
- (2) In Article 141(2) of that Order (exceptions to upper age limit for claims for unfair dismissal), after sub-paragraph (fg) insert—
- “(fh) Article 135C applies;”.
- (3) In Article 143(2) of that Order (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action) after sub-paragraph (ccc) insert—
- “(d) Article 135C applies;”.
- (4) In Article 144(2) of that Order (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (2) of that Article) after sub-paragraph (cc) insert—
- “(d) Article 135C applies;”.