



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Rights not to suffer unfair dismissal or other detriment*

#### **26 Right of employee not to be unfairly dismissed: Northern Ireland**

- (1) After Article 135 of the Employment Rights (Northern Ireland) Order 1996 (assertion of statutory right) there shall be inserted—

“135A **The national minimum wage**

- (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—
- (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee’s to which this Article applies; or
  - (b) the employer was prosecuted for an offence under section 31 of the National Minimum Wage Act 1998 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee’s to which this Article applies; or
  - (c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.
- (2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—
- (a) whether or not the employee has the right, or
  - (b) whether or not the right has been infringed;
- but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.
- (3) The following are the rights to which this Article applies—
- (a) any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an industrial tribunal, and

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*Status: This is the original version (as it was originally enacted).*

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- (b) any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration).”
- (2) In Article 137 of that Order (redundancy as unfair dismissal) after paragraph (6) there shall be inserted—
- “(6A) 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 135A (read with paragraph (2) of that Article).”
- (3) In Article 140 of that Order (exclusion of right: qualifying period of employment) in paragraph (3) (cases where no qualifying period is required) after sub-paragraph (f) there shall be inserted—
- “(ff) paragraph (1) of Article 135A (read with paragraph (2) of that Article) applies.”
- (4) In Article 141 of that Order (exclusion of right: upper age limit) in paragraph (2) (cases where upper age limit does not apply) after sub-paragraph (f) there shall be inserted—
- “(ff) paragraph (1) of Article 135A (read with paragraph (2) of that Article) applies.”
- (5) In Article 142 of that Order (exclusion of right: dismissal procedures agreements) in paragraph (2) (cases where paragraph (1) does not apply) the word “or” at the end of sub-paragraph (b) shall be omitted and after sub-paragraph (c) there shall be added “or
- (d) paragraph (1) of Article 135A (read with paragraph (2) of that Article) applies.”
- (6) The Department of Economic Development may by order repeal subsection (5) above and this subsection.