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STATUTORY INSTRUMENTS

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**1996 No. 1919**

**The Employment Rights (Northern Ireland) Order 1996**

PART XI

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

*The right*

**The right**

**126.**—(1) An employee has the right not to be unfairly dismissed by his employer.

(2) Paragraph (1) has effect subject to the following provisions of this Part (in particular Articles 140 to 144).

*Dismissal*

**Circumstances in which an employee is dismissed**

**127.**—(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to paragraph (2) and Article 128, only if)—

- (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
- (b) he is employed under a contract for a fixed term and that term expires without being renewed under the same contract, or
- (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

- (a) the employer gives notice to the employee to terminate his contract of employment, and
- (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

**Failure to permit return after childbirth treated as dismissal**

**128.**—(1) Where an employee who—

- (a) has the right conferred by Article 111, and
- (b) has exercised it in accordance with Article 114,

is not permitted to return to work, she shall (subject to the following provisions of this Article) be taken for the purposes of this Part to be dismissed for the reason for which she was not permitted to return with effect from the notified day of return (being deemed to have been continuously employed until that day).

- (2) Paragraph (1) does not apply in relation to an employee if—
  - (a) immediately before the end of her maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
  - (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work under Article 111 or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in paragraph (4).
- (3) Paragraph (1) does not apply in relation to an employee if—
  - (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work under Article 111,
  - (b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in paragraph (4), and
  - (c) she accepts or unreasonably refuses that offer.
- (4) The conditions referred to in paragraphs (2) and (3) are—
  - (a) that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and
  - (b) that the provisions of the contract as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had returned to work under Article 111.
- (5) Where on a complaint of unfair dismissal any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (2) or (3), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.
- (6) Paragraph (2) shall not apply in relation to the employment of a person by the managers of a voluntary school within the meaning of the Education and Libraries (Northern Ireland) Order 1986.

### **Effective date of termination**

- 129.**—(1) Subject to the following provisions of this Article, in this Part “the effective date of termination”—
- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,
  - (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and
  - (c) in relation to an employee who is employed under a contract for a fixed term which expires without being renewed under the same contract, means the date on which the term expires.
- (2) Where—
- (a) the contract of employment is terminated by the employer, and

- (b) the notice required by Article 118 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Articles 23(3), 140(1) and 153(1) the later date is the effective date of termination.

- (3) In paragraph (2)(b) “the material date” means—

- (a) the date when notice of termination was given by the employer, or
- (b) where no notice was given, the date when the contract of employment was terminated by the employer.

- (4) Where—

- (a) the contract of employment is terminated by the employee,
- (b) the material date does not fall during a period of notice given by the employer to terminate that contract, and
- (c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by Article 118 to expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Articles 23(3), 140(1) and 153(1) the later date is the effective date of termination.

- (5) In paragraph (4) “the material date” means—

- (a) the date when notice of termination was given by the employee, or
- (b) where no notice was given, the date when the contract of employment was terminated by the employee.

(6) Where an employee is taken to be dismissed for the purposes of this Part by virtue of Article 128, references in this Part to the effective date of termination are to the notified date of return.

### *Fairness*

#### **General**

**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,
- (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.

- (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.

(4) 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)

(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.

(5) Where the employee is taken to be dismissed for the purposes of this Part by virtue of Article 128, paragraph (4)(a) applies as if for the words “acted reasonably” onwards there were substituted the words “would have been acting reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee if she had not been absent from work, and”.

(6) Paragraphs (4) and (5) are subject to Articles 131 to 139 and 144.

### **Pregnancy and childbirth**

**131.**—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason (or, if more than one, the principal reason) for the dismissal is that she is pregnant or any other reason connected with her pregnancy,

(b) her maternity leave period is ended by the dismissal and the reason (or, if more than one, the principal reason) for the dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child,

(c) her contract of employment is terminated after the end of her maternity leave period and the reason (or, if more than one, the principal reason) for the dismissal is that she took, or availed herself of the benefits of, maternity leave,

(d) the reason (or, if more than one, the principal reason) for the dismissal is a relevant requirement, or a relevant recommendation, as defined by Article 98(2), or

(e) her maternity leave period is ended by the dismissal, the reason (or, if more than one, the principal reason) for the dismissal is that she is redundant and Article 109 has not been complied with.

(2) For the purposes of paragraph (1)(c)—

(a) a woman takes maternity leave if she is absent from work during her maternity leave period, and

(b) a woman avails herself of the benefits of maternity leave if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by Article 103 during that period.

(3) An employee who is dismissed shall also be regarded for the purposes of this Part as unfairly dismissed if—

(a) before the end of her maternity leave period she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period,

(b) her contract of employment was terminated within the period of four weeks beginning immediately after the end of her maternity leave period in circumstances in which she continued to be incapable of work and the certificate remained current, and

- (c) the reason (or, if more than one, the principal reason) for the dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child.

(4) Where—

- (a) an employee has the right conferred by Article 111,
- (b) it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, and
- (c) no offer is made of such alternative employment as is referred to in Article 113,

the dismissal of the employee which is treated as taking place by virtue of Article 128 is to be regarded for the purposes of this Part as unfair.

### **Health and safety cases**

**132.**—(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) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,
- (b) being a representative of workers on matters of health and safety at work or member of a safety committee—

- (i) in accordance with arrangements established under or by virtue of any statutory provision, or

- (ii) by reason of being acknowledged as such by the employer,

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

- (c) being an employee at a place where—

- (i) there was no such representative or safety committee, or

- (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

- (d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

- (e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of paragraph (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in paragraph (1)(e), he shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have dismissed him for taking (or proposing to take) them.

**Trustees of occupational pension schemes**

**133.**—(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, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) In this Article “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993) established under a trust.

**Employee representatives**

**134.** 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, being—

- (a) an employee representative for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

performed (or proposed to perform) any functions or activities as such an employee representative or candidate.

**Assertion of statutory right**

**135.**—(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) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or
  - (b) alleged that the employer had infringed a right of his which is a relevant statutory right.
- (2) It is immaterial for the purposes 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 that it has been infringed must be made in good faith.

(3) It is sufficient for paragraph (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

- (4) The following are relevant statutory rights for the purposes of this Article—
- (a) any right conferred by this Order for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal,
  - (b) the right conferred by Article 118 of this Order, and
  - (c) the rights conferred by Articles 35 and 60 of the Trade Union and Labour Relations Order (deductions from pay).

**Trade union membership or activities**

**136.**—(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 his dismissal is that the employee—

- (a) was, or proposed to become, a member of an independent trade union, or
- (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

(2) In paragraph (1)(b) “an appropriate time” means—

- (a) a time outside the employee’s working hours, or
- (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union;

and for this purpose “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) Where the reason, or one of the reasons, for the dismissal was —

- (a) the employee’s refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments, or
- (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in sub-paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

the reason shall be treated as falling within paragraph (1)(c).

(4) References in this Article to being or becoming a member of a trade union include references to being or becoming a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

## **Redundancy**

**137.**—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
- (c) it is shown that any of paragraphs (2) to (7) applies.

(2) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in any of sub-paragraphs (a) to (d) of paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article (and any requirements of the sub-paragraph, or paragraph, not relating to the reason are satisfied).

(3) 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 132 (read with paragraphs (2) and (3) of that Article).

(4) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 133(1).

(5) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 134.

(6) 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 135 (read with paragraphs (2) and (3) of that Article).

(7) 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 136(1) (read with paragraph (3) of that Article).

(8) In this Part “redundancy case” means a case where sub-paragraphs (a) and (b) of paragraph (1) of this Article are satisfied.

### **Replacements**

**138.**—(1) Where this Article applies to an employee he shall be regarded for the purposes of Article 130(1)(b) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) This Article applies to an employee where—

- (a) on engaging him the employer informs him in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth, and
- (b) the employer dismisses him in order to make it possible to give work to the other employee.

(3) This Article also applies to an employee where—

- (a) on engaging him the employer informs him in writing that his employment will be terminated on the end of a suspension of another employee from work on medical grounds or maternity grounds (within the meaning of Part VIII), and
- (b) the employer dismisses him in order to make it possible to allow the resumption of work by the other employee.

(4) Paragraph (1) does not affect the operation of Article 130(4) in a case to which this Article applies.

### **Pressure on employer to dismiss unfairly**

**139.**—(1) This Article applies where there falls to be determined for the purposes of this Part a question—

- (a) as to the reason, or principal reason, for which an employee was dismissed,
- (b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of Article 130(1)(b), or
- (c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing him.

(2) In determining the question no account shall be taken of any pressure which by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee; and the question shall be determined as if no such pressure had been exercised.



### *Exclusion of right*

#### **Qualifying period of employment**

**140.**—(1) Article 126 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in Article 96(2), paragraph (1) has effect in relation to that dismissal as if for the words “two years” there were substituted the words “one month”.

(3) Paragraph (1) does not apply if—

- (a) Article 116 or 128(1) applies,
- (b) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,
- (c) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,
- (d) Article 133 applies,
- (e) Article 134 applies,
- (f) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies,
- (g) Article 136 applies, or
- (h) Article 137 applies.

#### **Upper age limit**

**141.**—(1) Article 126 does not apply to the dismissal of an employee if on or before the effective date of termination he has attained—

- (a) in a case where—
  - (i) in the undertaking in which the employee was employed there was a normal retiring age for an employee holding the position held by the employee, and
  - (ii) the age was the same whether the employee holding that position was a man or a woman,that normal retiring age, and
- (b) in any other case, the age of sixty-five.

(2) Paragraph (1) does not apply if—

- (a) Article 116 or 128(1) applies,
- (b) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,
- (c) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,
- (d) Article 133 applies,
- (e) Article 134 applies,
- (f) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies,
- (g) Article 136 applies, or
- (h) Article 137 applies.

**Dismissal procedures agreements**

142.—(1) Where a dismissal procedures agreement is designated by an order under paragraph (3) which is for the time being in force—

- (a) the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under Article 126, and
- (b) accordingly, Article 126 does not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.

(2) Paragraph (1) does not apply if—

- (a) Article 116 or 128(1) applies,
- (b) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies, or
- (c) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies.

(3) An order designating a dismissal procedures agreement may be made by the Department, on an application being made to it jointly by all the parties to the agreement, if it is satisfied that—

- (a) every trade union which is a party to the agreement is an independent trade union,
- (b) the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed,
- (c) those procedures are available without discrimination to all employees falling within any description to which the agreement applies,
- (d) the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part,
- (e) the procedures provided by the agreement include a right to arbitration or adjudication by an independent referee, or by a tribunal or other independent body, in cases where (by reason of an equality of votes or for any other reason) a decision cannot otherwise be reached, and
- (f) the provisions of the agreement are such that it can be determined with reasonable certainty whether or not a particular employee is one to whom the agreement applies.

(4) If at any time when an order under paragraph (3) is in force in relation to a dismissal procedures agreement the Department is satisfied, whether on an application made to it by any of the parties to the agreement or otherwise, either—

- (a) that it is the desire of all the parties to the agreement that the order should be revoked, or
- (b) that the agreement no longer satisfies all the conditions specified in paragraph (3),

the Department shall revoke the order by an order under this paragraph.

(5) The transitional provisions which may be made in an order under paragraph (4) include, in particular, provisions directing—

- (a) that an employee—
  - (i) shall not be excluded from his right under Article 126 where the effective date of termination falls within a transitional period which ends with the date on which the order takes effect and which is specified in the order, and
  - (ii) shall have an extended time for presenting a complaint under Article 145 in respect of a dismissal where the effective date of termination falls within that period, and
- (b) that, where the effective date of termination falls within such a transitional period, an industrial tribunal shall, in determining any complaint of unfair dismissal presented by

an employee to whom the dismissal procedures agreement applies, have regard to such considerations as are specified in the order (in addition to those specified in this Part and Article 12(4) and (5) of the Industrial Tribunals (Northern Ireland) Order 1996).

### **Dismissal of those taking part in unofficial industrial action**

**143.**—(1) Article 126 does not apply to the dismissal of an employee if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.

(2) Paragraph (1) does not apply if—

- (a) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,
- (b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,
- (c) Article 134 applies,
- (d) Article 137(1) and (2) applies,
- (e) Article 137(1) and (3) applies, or
- (f) Article 137(1) and (5) applies.

(3) A strike or other industrial action is unofficial in relation to an employee unless—

- (a) he is a member of a trade union and the action is authorised or endorsed by that union, or
- (b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed;

but a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

(4) The provisions of Article 21(2) of the 1992 Order apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.

(5) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal; but where an act is repudiated as mentioned in Article 21A of the 1992 Order, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

(6) In this Article the “time of dismissal” means—

- (a) where the employee’s contract of employment is terminated by notice, when the notice is given,
- (b) where the employee’s contract of employment is terminated without notice, when the termination takes effect, and
- (c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a “working day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

(7) For the purposes of this Article membership of a trade union 7 for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is unofficial in relation to him or another notwithstanding that II he may in fact have ceased to be a member.

**Dismissals in connection with other industrial action**

144.—(1) This Article applies in relation to an employee who has a right to complain of unfair dismissal (the “complainant”) and who claims to have been unfairly dismissed, where at the date of the dismissal—

- (a) the employer was conducting or instituting a lock-out, or
- (b) the complainant was taking part in a strike or other industrial action.

(2) This Article does not apply if—

- (a) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,
- (b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,
- (c) Article 134 applies,
- (d) Article 137(1) and (2) applies,
- (e) Article 137(1) and (3) applies, or
- (f) Article 137(1) and (5) applies.

(3) In a case where this Article applies an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—

- (a) that one or more relevant employees of the same employer have not been dismissed, or
- (b) that a relevant employee has before the expiry of the period of three months beginning with the date of his dismissal been offered re-engagement and that the complainant has not been offered re-engagement.

(4) For this purpose “relevant employees” means—

- (a) in relation to a lock-out, employees who were directly interested in the dispute in contemplation or furtherance of which the lock-out occurred, and
- (b) in relation to a strike or other industrial action, those employees at the establishment of the employer at or from which the complainant works who at the date of his dismissal were taking part in the action.

(5) Nothing in Article 143 affects the question who are relevant employees for the purposes of this Article.

(6) An offer of re-engagement means an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

(7) In this Article “date of dismissal” means—

- (a) where the employee’s contract of employment was terminated by notice, the date on which the employer’s notice was given, and
- (b) in any other case, the effective date of termination.

(8) Article 145(2) does not apply in relation to a complaint to which this Article applies, but an industrial tribunal shall not consider such a complaint unless it is presented—

- (a) before the end of the period of six months beginning with the date of the complainant’s dismissal; 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 six months.

(9) Where it is shown that the condition referred to in paragraph (3)(b) is fulfilled the references in Articles 130 to 138 to the reason or principal reason for which the complainant was dismissed shall be read as references to the reason or principal reason he has not been offered re-engagement.