STATUTORY INSTRUMENTS

1993 No. 2668 (N.I. 11)

NORTHERN IRELAND

The Industrial Relations (Northern Ireland) Order 1993

Made - - - -	*27th October 1993*
Laid before Parliament	*26th November 1993*
Coming into operation on days to be appointed under Article 1	

At the Court at Buckingham Palace, the 27th day of October 1993

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes to which section 54(1) of the Trade Union Reform and Employment Rights Act 1993(**1**) applies:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974(**2**) (as modified by section 54(1) of the said Act of 1993) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1. This Order may be cited as the Industrial Relations (Northern Ireland) Order 1993 and shall come into operation on such day or days as the Department of Economic Development may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) 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—

(**1**) 1993 c. 19
(**2**) 1974 c. 28
(**3**) 1954 c. 33 (N.I.)

"the Act of 1965" means the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(**4**);

"the No. 1 Order" means the Industrial Relations (Northern Ireland) Order 1976(**5**);

"the No. 2 Order" means the Industrial Relations (No. 2) (Northern Ireland) Order 1976(**6**);

Employment rights

Maternity rights

3. For Articles 14 to 32 of the No. 2 Order (maternity rights of employees) there shall be substituted the Articles set out in Schedule 1.

Right to employment particulars

4.—(1) In the No. 2 Order—

(a) after Article 42 there shall be inserted the Articles 43 to 43E, together with the heading, set out in Part I of Schedule 2; and

(b) for Article 47 there shall be substituted the Article and heading set out in Part II of that Schedule.

(2) Sections 4 and 5 of the Act of 1965 (which are superseded by the provisions set out in Schedule 2) shall cease to have effect.

Entitlement to itemised pay statement

5. After Article 49(5) of the No. 2 Order (provisions disapplied in relation to employment below minimum number of hours weekly) there shall be inserted—

"(5A) Subject to paragraph (5B), paragraph (5) shall have effect as respects Article 44 subject to the following modifications, namely—

(a) the substitution of a reference to 8 hours weekly for the reference to 16 hours weekly; and

(b) the omission of the words "Subject to paragraphs (6), (7) and (8)".

(5B) Paragraph (5A) shall not apply in relation to employment if, at the relevant date, the number of employees employed by the employer, added to the number employed by any associated employer, is less than 20.

(5C) For the purposes of paragraph (5B) "relevant date" means the date on which any payment of wages or salary is made to an employee in respect of which he would, apart from paragraph (5B), have the right to an itemised pay statement.".

Right to claim unfair dismissal and not to suffer detriment in health and safety cases

6.—(1) In the No. 2 Order after Article 13 there shall be inserted the heading and Articles set out in Part I of Schedule 3 (which confer a right not to suffer detriment in health and safety cases).

(2) In the No. 1 Order after Article 22A there shall be inserted the Article set out in Part II of Schedule 3 (which provides for certain dismissals in health and safety cases to be unfair).

(**4**) 1965 c. 19 (N.I.)
(**5**) 1976 NI 16
(**6**) 1976 NI 28

(3) In the No. 1 Order for Articles 33 to 34 there shall be substituted the Articles set out in Part III of Schedule 3 (which re-enact those provisions with amendments relating to certain dismissals in health and safety cases).

(4) In the No. 1 Order for Articles 39 to 41 there shall be substituted the heading and Articles set out in Part IV of Schedule 3 (which re-enact those provisions with amendments relating to certain dismissals in health and safety cases).

Dismissal on ground of assertion of statutory right

7. After Article 22C of the No. 1 Order there shall be inserted—

"**Dismissal on ground of assertion of statutory right**

22D.—(1) The dismissal of an employee by an employer shall be regarded for the purposes of this Order as having been unfair if the reason for it (or, if more than one, the principal reason) was 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) whether the employee has the right or not and whether it has been infringed or not, 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 shall be 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 statutory rights are relevant for the purposes of this Article, namely—

(a) any right conferred by—

(i) the Act of 1965;

(ii) this Order;

(iii) the No. 2 Order; or

(iv) the Wages (Northern Ireland) Order 1988,

for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal;

(b) the right conferred by—

(i) section 1 of the Act of 1965; or

(ii) Article 38 or 65 of the Industrial Relations (Northern Ireland) Order 1992 (deductions from pay).".

Compensation for unfair dismissal when reinstatement or re-engagement ordered

8.—(1) Articles 32, 36 and 37 of the No. 1 Order (awards of compensation for unfair dismissal) shall be amended in accordance with paragraphs (2) to (6).

(2) In Article 32(1) for the words "Article 37" there shall be substituted the words "paragraph (1A)".

(3) In Article 32 after paragraph (1) there shall be inserted—

"(1A) Paragraph (1) is subject to Article 37 except that the limit imposed by that Article may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under Article 31(3)(a) or (5)(d), as the case may be.".

(4) In Article 36(1) for the words "Articles 37 and 38" there shall be substituted the words "paragraph (8) and Article 38".

(5) In Article 36 after paragraph (7) there shall be added—

"(8) Paragraph (1) is subject also to Article 37 except that, in the case of an award of compensation under Article 32(2)(a) where an additional award falls to be made, the limit imposed by Article 37 may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under Article 31(3)(a) or (5)(d), as the case may be, if that limit would otherwise reduce the amount of the compensatory award when added to the additional award.".

(6) In Article 37(1) after the word "shall" there shall be inserted the words "(save where the exception in Article 32(1A) or 36(8) applies)".

Application of industrial relations legislation to the Crown

9.—(1) Subject to the following provisions of this Article—

(a) the provisions of the No. 1 Order, except Articles 42 to 47 and Part IV;

(b) the provisions of the No. 2 Order; and

(c) the provisions of the 1992 Order, except Articles 42, 43 and 65(5),

shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.

(2) In this Article "Crown employment" means employment under or for the purposes of a government department.

(3) This Article applies to service as a member of the naval, military or air forces of the Crown but only in accordance with Article 10 and it applies also to employment by any association established for the purposes of Part VI of the Reserve Forces Act 1980(**7**).

(4) The provisions listed in paragraph (5) shall not have effect in relation to any Crown employment in respect of which there is in force a certificate issued by or on behalf of the Secretary of State certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from this Article for the purpose of safeguarding national security or protecting public safety or public order; and any document purporting to be a certificate so issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.

(5) The provisions referred to in paragraph (4) are the following, namely—

(a) in the No. 1 Order—

(i) Articles 20 to 41 (except so far as relating to a dismissal which is regarded as unfair by reason of Article 22B or 22C(1)(b), (c) or (d) of the No. 1 Order or Article 29 of the No. 2 Order);

(ii) Article 48 (except paragraph (2B));

(iii) Part V (so far as relating to any of those provisions);

(b) in the No. 2 Order—

(i) Articles 3 to 13;

(ii) Articles 39 to 41;

(**7**) 1980 c. 9

(iii) Articles 44 to 46 and 47 (so far as relating to Articles 44 to 46);

(iv) Part IV (so far as relating to any of those provisions).

(6) For the purposes of the application of the provisions mentioned in paragraph (1) in relation to Crown employment in accordance with that paragraph—

(a) any reference to an employee shall be construed as a reference to a person in Crown employment;

(b) any reference to a contract of employment shall be construed as a reference to the terms of employment of a person in Crown employment;

(c) any reference to dismissal shall be construed as a reference to the termination of Crown employment;

(d) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 48(3) of the Act of 1965, are treated as equivalent to redundancy in relation to Crown employment;

(e) the reference in Article 59(7)(c) of the No. 1 Order and Article 40(1)(e) of the 1992 Order to a person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest; and

(f) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown or Head of a department, as a reference to his functions or (as the context may require) to the department of which he is in charge and, in relation to a government department, shall be construed as a reference to the functions of the department or (as the context may require) to the department.

(7) Where the terms of employment of a person in Crown employment restrict his right to take part in—

(a) certain political activities; or

(b) activities which may conflict with his official functions,

nothing in Article 39 of the No. 2 Order shall require him to be allowed time off work for public duties connected with any such activities.

(8) In this Article—

"government department" means a Northern Ireland department or a department of the Government of the United Kingdom;

"the 1992 Order" means the Industrial Relations (Northern Ireland) Order 1992(**8**).

(9) This Article and Article 10 shall be construed as one with the No. 1 Order.

Application of No. 1 and No. 2 Orders to armed forces

10.—(1) The provisions which apply, by virtue of Article 9, to service as a member of the naval, military or air forces of the Crown are—

(a) in the No. 1 Order—

(i) Articles 20 to 41 (except Article 22B);

(ii) Article 48; and

(iii) Part V;

(b) in the No. 2 Order—

(**8**) 1992 NI 5

(i) Articles 9 to 13;

(ii) Articles 14 to 32;

(iii) Article 41A;

(iv) Articles 43 to 47;

(v) Article 49; and

(vi) Part IV.

(2) The Secretary of State may by order—

(a) amend paragraph (1) by making additions to, or omissions from, the provisions for the time being specified in that paragraph; and

(b) make any provision apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the order.

(3) Subject to paragraph (5), modifications made under paragraph (2) may include provision precluding the making of a complaint or reference to any industrial tribunal unless the person aggrieved has availed himself of the service procedures for the redress of complaints applicable to him.

(4) Where modifications include the provision authorised by paragraph (3) the order shall also include provision designed to secure that the service procedures for the redress of complaints result in a determination, or what is to be treated under the order as a determination, in sufficient time to enable a complaint or reference to be made to an industrial tribunal.

(5) No provision shall be made by virtue of paragraph (3) which has the effect of substituting, for any period specified as the normal period for a complaint or reference on any matter to an industrial tribunal, a period longer than six months.

(6) No order shall be made under paragraph (2) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(7) In this Article—

"the normal period for a complaint or reference", in relation to any matter within the jurisdiction of an industrial tribunal, means the period specified in the relevant statutory provision as the period within which the complaint or reference must be made, disregarding any provision permitting an extension of that period at the discretion of the tribunal; and

"the service procedures for the redress of complaints" means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in sections 180 and 181 of the Army Act 1955(**9**), sections 180 and 181 of the Air Force Act 1955(**10**) and section 130 of the Naval Discipline Act 1957(**11**).

Right to declaration of invalidity of discriminatory terms and rules

11. In Article 77A of the Sex Discrimination (Northern Ireland) Order 1976(**12**) (application of Article 77 to certain terms and rules), after paragraph (4) there shall be inserted—

"(4A) A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of paragraph (1) of Article 77 if he has reason to believe—

(a) that the term or rule may at some future time have effect in relation to him; and

(**9**) 1955 c. 18
(**10**) 1955 c. 19
(**11**) 1957 c. 53
(**12**) 1976 NI 15

(b) where he alleges that it is void by virtue of sub-paragraph (c) of that paragraph, that—

(i) an act for the doing of which it provides may at some such time be done in relation to him; and

(ii) the act would be, or be deemed by virtue of paragraph (3) to be, rendered unlawful by this Order if done in relation to him in present circumstances.

(4B) In the case of a complaint about—

(a) a term of a collective agreement made by or on behalf of—

(i) an employer;

(ii) an organisation of employers of which an employer is a member; or

(iii) an association of such organisations of one of which an employer is a member; or

(b) a rule made by an employer,

paragraph (4A) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(4C) In the case of a complaint about a rule made by an organisation, authority or body to which paragraph (2) applies, paragraph (4A) applies to any person—

(a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body;

(b) on whom the organisation, authority or body has conferred an authorisation or qualification; or

(c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.

(4D) When an industrial tribunal finds that a complaint presented to it under paragraph (4A) is well-founded the tribunal shall make an order declaring that the term or rule is void.".

Redundancy consultation procedures

12.—(1) Part IV of the No. 1 Order (procedure for handling redundancies) shall be amended in accordance with paragraphs (2) to (7).

(2) In Article 49—

(a) in paragraph (5) after sub-paragraph (e) there shall be inserted

"and

(f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any statutory provision) to employees who may be dismissed.";

(b) for paragraph (7) there shall be substituted—

"(7) The consultation required by this Article shall include consultation about ways of—

(a) avoiding the dismissals;

(b) reducing the numbers of employees to be dismissed; and

(c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the trade union representatives."; and

(c) at the end of paragraph (8) there shall be inserted—

"Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.".

(3) In Article 50, at the end of paragraph (6) there shall be inserted—

"Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.".

(4) Article 52(3) shall cease to have effect.

(5) In Article 52(5)(a) for the words "for a reason other than redundancy" there shall be substituted "otherwise than as redundant".

(6) In Article 56—

(a) for paragraph (2) there shall be substituted—

"(1) In this Part references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.

(2) For the purposes of any proceedings under this Part, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.";

(b) paragraph (4A) shall cease to have effect.

(7) In Article 57(1)(b) for the words "the handling of redundancies" there shall be substituted "handling the dismissal of employees as redundant".

(8) In Article 76 of the No. 1 Order—

(a) in paragraph (7) for the words "Articles 42, 43, 49 and 50" there shall be substituted "Articles 42 and 43"; and

(b) paragraph (9) shall cease to have effect.

Other employment matters

Repeal of Part III of Wages (Northern Ireland) Order 1988

13. Part III of the Wages (Northern Ireland) Order 1988(**13**) (which provides for statutory minimum remuneration for certain workers in accordance with wages orders made by wages councils) shall cease to have effect.

Constitution of industrial tribunals

14. After Article 58 of the No. 1 Order there shall be inserted—

"**Constitution of industrial tribunals**

58A.—(1) Subject to the following provisions of this Article, proceedings before an industrial tribunal shall be heard by—

(**13**) 1988 NI 7

(a) the person who, in accordance with industrial tribunal regulations, is the chairman; and

(b) two other members, or (with the consent of the parties) one other member, selected as the other members (or member) in accordance with such regulations.

(2) Subject to paragraph (5), the proceedings to which paragraph (3) applies shall be heard by the person specified in paragraph (1)(a) alone.

(3) This paragraph applies to—

(a) proceedings on an application under Article 39, 40A or 41 of this Order;

(b) proceedings on a complaint under Article 44 of this Order or under Article 7 of the Wages (Northern Ireland) Order 1988;

(c) proceedings in respect of which an industrial tribunal has jurisdiction by virtue of an order under Article 57 of the No. 2 Order;

(d) proceedings in which the parties have given their written consent to the proceedings being heard in accordance with paragraph (2) (whether or not they have subsequently withdrawn it);

(e) proceedings in which the person bringing the proceedings has given written notice withdrawing the case; and

(f) proceedings in which the person (or, where more than one, each of the persons) against whom the proceedings are brought does not, or has ceased to, contest the case.

(4) The Department may by order amend the provisions of paragraph (3).

(5) Proceedings to which paragraph (3) applies shall be heard in accordance with paragraph (1) if a person who, in accordance with industrial tribunal regulations, may be the chairman of an industrial tribunal, having regard to—

(a) whether there is a likelihood of a dispute arising on the facts which makes it desirable for the proceedings to be heard in accordance with paragraph (1);

(b) whether there is a likelihood of an issue of law arising which would make it desirable for the proceedings to be heard in accordance with paragraph (2);

(c) any views of any of the parties as to whether or not the proceedings ought to be heard in accordance with either of those paragraphs; and

(d) whether there are other proceedings which might be heard concurrently but which are not proceedings to which paragraph (3) applies,

decides (at any stage of the proceedings) that the proceedings are to be heard in accordance with paragraph (1).

(6) Regulations made under Article 59 may provide that in such circumstances as the regulations may specify any act required or authorised by the regulations to be done by an industrial tribunal may be done by the person specified in paragraph (1)(a) alone.

(7) Where the Secretary of State so directs in relation to any proceedings on grounds of national security, the proceedings shall be heard and determined, and any act required or authorised by regulations made under Article 59 to be done by an industrial tribunal in relation to the proceedings shall be done, by the President of Industrial Tribunals and the Fair Employment Tribunal or a person nominated under section 3(6) of the Fair Employment (Northern Ireland) Act 1989(**14**) to discharge the functions of the President, alone.

(**14**) 1989 c. 32

(8) In this Article "industrial tribunal regulations" means regulations under Article 30 of the Industrial Training (Northern Ireland) Order 1984(**15**) (constitution of industrial tribunals).".

Extension of power to confer on industrial tribunals jurisdiction in respect of contracts of employment, etc.

15.—(1) Article 57 of the No. 2 Order (power to confer on industrial tribunals jurisdiction in respect of claims for damages for breach of contract of employment, etc.) shall be amended in accordance with paragraphs (2) to (4).

(2) For paragraph (1) there shall be substituted—

"(1) The Secretary of State may by order provide that proceedings in respect of—

(a) any claim to which this Article applies; or

(b) any such claim of a description specified in the order,

may, subject to such exceptions (if any) as may be specified in the order, be brought before an industrial tribunal.".

(3) For paragraph (3) there shall be substituted—

"(3) This Article does not apply to a claim for damages, or for a sum due, in respect of personal injuries.".

(4) After paragraph (4) there shall be inserted—

"(4A) An order under this Article may provide that an industrial tribunal shall not in proceedings in respect of a claim, or a number of claims relating to the same contract, order the payment of an amount exceeding such sum as may be specified in the order as the maximum amount which a tribunal may order to be paid in relation to a claim or in relation to a contract.".

Agreements not to take proceedings before industrial tribunals

16.—(1) Article 78 of the No. 1 Order (restrictions on contracting out) shall be amended in accordance with paragraphs (2) and (3).

(2) In paragraph (2) at the end there shall be added—

"(f) to any agreement to refrain from instituting or continuing any proceedings, other than excepted proceedings, specified in Article 62(1)(a) or (b) before an industrial tribunal if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement.".

(3) After paragraph (2) there shall be added—

"(3) The proceedings excepted from paragraph (2)(f) are proceedings on a complaint of non-compliance with Article 49.

(4) 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 complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer 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;

(**15**) 1984 NI 9

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.

(5) In paragraph (4)—

"independent", in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

"qualified lawyer" means—

(a) a barrister, whether in practice as such or employed to give legal advice; or

(b) a solicitor of the Supreme Court who holds a practising certificate.

(6) For the purposes of paragraph (5) any two persons are to be treated as "connected" if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

(4) Schedule 4 shall have effect for making corresponding amendments in the Sex Discrimination (Northern Ireland) Order 1976(**16**), the No. 2 Order, the Wages (Northern Ireland) Order 1988(**17**) and the Industrial Relations (Northern Ireland) Order 1992(**18**).

Restriction of publicity in cases involving sexual misconduct

17.—(1) Article 59 of the No. 1 Order (regulations as to industrial tribunal procedure) shall be amended in accordance with paragraphs (2) to (4).

(2) After paragraph (6) there shall be inserted—

"(6A) The regulations may include provision—

(a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by, or making, the allegation;

(b) for cases involving allegations of sexual misconduct, enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

(6B) In this Article—

"identifying matter", in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation;

"relevant programme" means a programme included in a programme service, within the meaning of the Broadcasting Act 1990(**19**);

"restricted reporting order" means an order prohibiting the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland;

(**16**) 1976 NI 15
(**17**) 1988 NI 7
(**18**) 1992 NI 5
(**19**) 1990 c. 42

"sexual misconduct" means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed;

"sexual offence" means—

(a) rape, aiding, abetting, counselling or procuring rape or attempted rape, incitement to rape, conspiracy to rape or burglary with intent to rape;

(b) any offence under any of the following statutory provisions, namely—

(i) section 52, 61 or 62 of the Offences Against the Person Act 1861(**20**);

(ii) section 3, 4 or 5 of the Criminal Law Amendment Act 1885(**21**);

(iii) section 1 or 2 of the Punishment of Incest Act 1908(**22**);

(iv) section 22 of the Children and Young Persons Act (Northern Ireland) 1968(**23**);

(v) Article 9 of the Criminal Justice (Northern Ireland) Order 1980(**24**);

(vi) Article 122(1)(a) or (b) or 123 of the Mental Health (Northern Ireland) Order 1986(**25**);

(c) any attempt to commit any of the offences mentioned in sub-paragraph (a) or (b);

"written publication" includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.".

(3) In paragraph (8) after the word "send" there shall be inserted the words "(subject to any regulations under paragraph (6A)(a))".

(4) At the end there shall be added the following paragraphs—

"(12) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale—

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

(b) in the case of publication in any other form, the person publishing the matter; and

(c) in the case of matter included in a relevant programme—

(i) any body corporate engaged in providing the service in which the programme is included; and

(ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(13) Where a person is charged with an offence under paragraph (12) it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.

(**20**) 1861 c. 100
(**21**) 1885 c. 69
(**22**) 1908 c. 45
(**23**) 1968 c. 34 (N.I.)
(**24**) 1980 NI 6
(**25**) 1986 NI 4

(14) For the purposes of paragraph (12), section 20(2) of the Interpretation Act (Northern Ireland) 1954(**26**) applies with the omission of the words "the liability of whose members is limited" and, where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.".

Supplementary

Miscellaneous and consequential amendments, transitional and saving provisions and repeals

18.—(1) The statutory provisions specified in Schedule 5 shall have effect subject to the amendments there specified (which are miscellaneous amendments).

(2) The statutory provisions specified in Schedule 6 shall have effect subject to the amendments there specified (which are consequential amendments).

(3) The transitional provisions and savings set out in Schedule 7 shall have effect.

(4) The statutory provisions specified in Schedule 8 are repealed to the extent specified in the third column of that Schedule.

N. H. Nicholls
Clerk of the Privy Council

(**26**) 1954 c. 33 (N.I.)

SCHEDULES

SCHEDULE 1

Article 3.

ARTICLES 14 TO 32 OF THE NO. 2 ORDER, AS SUBSTITUTED

General right to maternity leave

14.—(1) An employee who is absent from work at any time during her maternity leave period shall, subject to Articles 17 and 18, be entitled to the benefit of the terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).

(2) Paragraph (1) does not confer any entitlement to remuneration.

Commencement of maternity leave period

15.—(1) Subject to paragraph (2), an employee's maternity leave period commences with—

(a) the date which, in accordance with Article 17, she notifies to her employer as the date on which she intends her period of absence from work in exercise of her right to maternity leave to commence; or

(b) if earlier, the first day on which she is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the sixth week before the expected week of childbirth.

(2) Where childbirth occurs before the day with which the employee's maternity leave period would otherwise commence, her maternity leave period shall commence with the day on which childbirth occurs.

(3) The Department may by order vary either of the provisions of paragraphs (1) and (2).

Duration of maternity leave period

16.—(1) Subject to paragraphs (2) and (3), an employee's maternity leave period shall continue for the period of fourteen weeks from its commencement or until the birth of the child, if later.

(2) Subject to paragraph (3), where any requirement imposed by or under any statutory provision, other than a provision for the time being specified in an order made under Article 26(3), prohibits her working for any period after the end of the period mentioned in paragraph (1) by reason of her having recently given birth, her maternity leave period shall continue until the expiry of that later period.

(3) Where an employee is dismissed after the commencement of her maternity leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the dismissal.

(4) The Department may by order vary any of the provisions of this Article.

Notice of commencement of leave

17.—(1) An employee shall not have the right conferred by Article 14 unless—

(a) she notifies her employer of the date (within the restriction imposed by paragraph (2)) ("the notified leave date") on which she intends her period of absence from work in exercise of her right to maternity leave to commence—

(i) not less than twenty-one days before that date; or

(ii) if that is not reasonably practicable, as soon as is reasonably practicable;

(b) where she is first absent from work wholly or partly because of pregnancy or childbirth before the notified leave date or before she has notified such a date and after the beginning of the sixth week before the expected week of childbirth, she notifies her employer as soon as is reasonably practicable that she is absent for that reason; or

(c) where childbirth occurs before the notified leave date or before she has notified such a date, she notifies her employer that she has given birth as soon as is reasonably practicable after the birth,

and any notice she is required to give under sub-paragraphs (a) to (c) shall, if her employer so requests, be given in writing.

(2) No date may be notified under paragraph (1)(a) which occurs before the beginning of the eleventh week before the expected week of childbirth.

(3) Where, in the case of an employee, either sub-paragraph (b) or (c) of paragraph (1) has fallen to be satisfied, and has been so satisfied, nothing in sub-paragraph (a) of that paragraph shall impose any requirement on the employee.

Requirement to inform employer of pregnancy etc.

18.—(1) An employee shall not have the right conferred by Article 14 unless she informs her employer in writing at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable—

(a) that she is pregnant; and

(b) of the expected week of childbirth or, if the childbirth has occurred, the date on which it occurred.

(2) An employee shall not have the right conferred by Article 14 unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

Requirement to inform employer of return during maternity leave period

18A.—(1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days notice of the date on which she intends to return.

(2) If an employee returns to work as mentioned in paragraph (1) without notifying her employer of her intention to do so or without giving him the notice required by that paragraph her employer shall be entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has seven days notice of her return.

(3) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of her maternity leave period.

(4) If an employee who has been notified under paragraph (2) that she is not to return to work before the date specified by her employer does return to work before that date the employer shall be under no contractual obligation to pay her remuneration until the date specified by him as the date on which she may return.

Special provision where redundancy during maternity leave period

19.—(1) Where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment, she shall be entitled, where there is a suitable available vacancy, to be offered (before the ending of her employment under that contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (2) (and takes effect immediately on the ending of her employment under the previous contract).

(2) The new contract of employment must be such that—

(a) 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) the provisions of the new 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 continued to be employed under the previous contract.

Contractual right to maternity leave

19A.—(1) An employee who has the right to maternity leave under Article 14 and a right to maternity leave under a contract of employment or otherwise may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of Articles 15 to 19 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (1) as they apply to the exercise of the right under Article 14.

Right to return to work

20.—(1) An employee who—

(a) has the right conferred by Article 14; and

(b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than two years,

shall also have the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.

(2) An employee's right to return to work under this Article is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed—

(a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her maternity leave period;

(b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work (but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (credit for the period of absence in certain cases)); and

(c) otherwise on terms and conditions no less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period.

(3) The Department may by order vary the period of two years specified in paragraph (1) or that period as so varied.

Requirement to give notice of return to employer

21.—(1) An employee shall not have the right to return to work under Article 20 unless she includes with the information required by Article 18(1) the information that she intends to exercise the right.

(2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with paragraph (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right to return to work under Article 20, the employee shall not be entitled to that right unless she gives the requested confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as is reasonably practicable.

(3) A request under paragraph (2) shall be—

(a) made in writing; and

(b) accompanied by a written statement of the effect of that paragraph.

Special provision where redundancies occur before return to work

22.—(1) Where an employee has the right to return to work under Article 20, but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with paragraph (2).

(2) The new contract of employment must be such that—

(a) 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) the provisions of the new 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 pursuant to her right to return.

Exercise of right to return to work

23.—(1) An employee shall exercise the right to return to work under Article 20 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (the "notified day of return").

(2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.

(3) Subject to paragraph (4), an employee may—

(a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred; and

(b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with paragraph (1), so that she returns to work not later than four weeks from the end of that period of twenty-nine weeks,

if, before the notified day of return (or the end of the period of twenty-nine weeks), she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return (or the end of that period).

(4) Where an employee has once exercised a right of postponement or extension under paragraph (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that paragraph in connection with the same return to work.

(5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable afterwards.

(6) If—

(a) no day of return has been notified;

(b) there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect; and

(c) in consequence, the employee does not notify a day of return,

the employee may exercise her right to return in accordance with paragraph (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the period of twenty-nine weeks.

(7) Where the employee has either—

(a) exercised the right under paragraph (3)(b) to extend the period during which she may exercise her right to return; or

(b) refrained from notifying the day of return in the circumstances described in paragraph (6),

the other of those paragraphs shall apply as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the further period of four weeks or, as the case may be, of the period of twenty-eight days from the end of the interruption of work.

Supplementary

24.—(1) Schedule 2 shall have effect for the purpose of supplementing the preceding Articles in relation to an employee's right to return to work under Article 20.

(2) Article 30 also has effect for that purpose.

(3) Subject to paragraph (4), in Article 30 and Schedule 2 "notified day of return" has the same meaning as in Article 23.

(4) Where—

(a) an employee's return is postponed under paragraph (2) or (3)(a) of Article 23; or

(b) the employee returns to work on a day later than the notified day of return in the circumstances described in paragraph (5) of that Article,

then, subject to paragraph (4) of that Article, references in those paragraphs and in Article 30 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or that later day.

Contractual rights

25.—(1) An employee who has the right to return to work under Article 20 and a right to return to work after absence because of pregnancy or childbirth under a contract of employment or otherwise may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of Articles 20, 22 to 24 and 30 and paragraphs 1 to 4 of Schedule 2 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (1) as they apply to the exercise of the right to return to work under Article 20.

Suspension from work on maternity grounds

26.—(1) For the purposes of Articles 27 and 28 an employee is suspended on maternity grounds where, in consequence of—

(a) any requirement imposed by or under any relevant statutory provision; or

(b) any recommendation in any relevant provision of a code of practice issued or approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978,

she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

(2) For the purposes of this Article, Articles 27 and 28 and Article 32 an employee shall be regarded as suspended from work only if, and so long as, she continues to be employed by her employer, but is not provided with work or (disregarding alternative work for the purposes of Article 27) does not perform the work she normally performed before the suspension.

(3) For the purposes of paragraph (1) a provision is a "relevant" statutory provision or provision if it is for the time being specified as a relevant statutory provision or provision in an order made by the Department under this paragraph.

Right to offer of alternative work

27.—(1) Where an employer has available suitable alternative work for an employee the employee has a right to be offered to be provided with it before being suspended on maternity grounds.

(2) For alternative work to be suitable for an employee for the purposes of this Article—

(a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances; and

(b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

(3) An employee may present a complaint to an industrial tribunal that her employer has failed to offer to provide her with work in contravention of paragraph (1).

(4) An industrial tribunal shall not entertain a complaint under paragraph (3) unless it is presented to the tribunal before the end of the period of three months beginning with the first day of the suspension, or 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 within the period of three months.

(5) Where the tribunal finds the complaint well-founded it may make an award of compensation to be paid by the employer to the employee.

(6) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under paragraph (1) by the employer's failure complained of and to any loss sustained by the complainant which is attributable to that failure.

Right to remuneration on suspension

28.—(1) An employee who is suspended on maternity grounds shall be entitled to be paid remuneration by her employer while she is so suspended.

(2) An employee shall not be entitled to remuneration under this Article in respect of any period during which her employer has offered to provide her with work which is suitable alternative work for the purposes of Article 27 and the employee has unreasonably refused to perform that work.

(3) The amount of remuneration payable by an employer to an employee under this Article shall be a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.

(4) Subject to paragraph (5), a right to remuneration under this Article shall not affect any right of an employee in relation to remuneration under her contract of employment (in paragraph (5) referred to as "contractual remuneration").

(5) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under this Article in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under this Article in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to an industrial tribunal that her employer has failed to pay the whole or any part of remuneration to which she is entitled under this Article.

(7) An industrial tribunal shall not entertain a complaint relating to remuneration under this Article in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, or 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 within the period of three months.

(8) Where an industrial tribunal finds a complaint under paragraph (6) well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to her.

(9) For the purposes of Part II of Schedule 2 to the No. 1 Order as it applies for the calculation of a week's pay for the purposes of this Article, the calculation date is the day before the suspension referred to in Article 26(1) begins or, where that day falls within an employee's maternity leave period or within the further period up to the day on which an employee exercises her right to return to work under Article 20, the day before the beginning of the maternity leave period.

Dismissal on ground of pregnancy or childbirth

29. An employee shall be treated for the purposes of the No. 1 Order as unfairly dismissed if—

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

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

(d) the reason (or, if there is more than one, the principal reason) for her dismissal, where—

(i) 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; and

(ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in circumstances where she continued to be incapable of work and the certificate relating to her incapacity remained current,

is that she has given birth to a child or any other reason connected with her having given birth to a child;

(e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement or recommendation such as is referred to in Article 26(1); or

(f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and Article 19 has not been complied with.

For the purposes of paragraph (c) a woman "takes maternity leave" if she is absent from work during her maternity leave period and 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 14 during that period.

Failure to permit to return treated as dismissal

30. Where an employee has the right to return to work under Article 20 and has exercised it in accordance with Article 23 but is not permitted to return to work, then, subject to Article 31, she shall be treated for the purposes of—

(a) the provisions of the No. 1 Order relating to unfair dismissal; and

(b) the provisions of the Act of 1965 relating to redundancy,

as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

Exclusion of Article 30(a) in certain cases

31.—(1) Article 30(a) shall 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 in accordance with Article 20, or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in paragraph (3).

(2) Article 30(a) shall not apply in relation to an employee if—

(a) it is not reasonaby 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 in accordance with Article 20; and

(b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in paragraph (3); and

(c) she accepts or unreasonably refuses that offer.

(3) The conditions referred to in paragraphs (1) and (2) 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 in accordance with Article 20.

(4) Paragraph (1) 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.

(5) Where on a complaint of unfair dismissal any question arises as to whether the operation of Article 30(a) is excluded by paragraph (1) or (2), it shall be for the employer to show that the provisions of that paragraph were satisfied in relation to the complainant.

Dismissal of replacement

32.—(1) Where an employer—

(a) on engaging an employee informs the employee 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) dismisses the first-mentioned employee in order to make it possible to give work to the other employee,

then, for the purposes of Article 22(1)(b) of the No. 1 Order, but without prejudice to the application of Article 22(3) of that Order, the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(2) Where an employer—

(a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as is referred to in Article 26 of another employee; and

(b) dismisses the first-mentioned employee in order to make it possible to allow the resumption of work by the other employee,

then, for the purposes of Article 22(1)(b) of the No. 1 Order, but without prejudice to the application of Article 22(3) of that Order, the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

SCHEDULE 2

Article 4.

EMPLOYMENT PARTICULARS

PART I

ARTICLES 43 TO 43E OF THE NO. 2 ORDER, AS INSERTED

Written particulars of employment

Employers' duty to give statement of employment particulars

43.—(1) Not later than two months after the beginning of an employee's employment with an employer, the employer shall give to the employee a written statement which may, subject to Article 43A(4), be given in instalments before the end of that period.

(2) The statement shall contain particulars of—

(a) the names of the employer and employee;

(b) the date when the employment began; and

(c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(3) The statement shall also contain particulars, as at a specified date not more than seven days before the statement or instalment of the statement containing them is given, of—

(a) the scale or rate of remuneration or the method of calculating remuneration;

(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals);

(c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours);

(d) any terms and conditions relating to any of the following—

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);

(ii) incapacity for work due to sickness or injury, including any provision for sick pay; and

(iii) pensions and pension schemes;

(e) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment;

(f) the title of the job which the employee is employed to do or a brief description of the work for which the employee is employed;

(g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;

(h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer;

(j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made; and

(k) where the employee is required to work outside the United Kingdom for a period of more than one month—

(i) the period for which he is to work outside the United Kingdom;

(ii) the currency in which remuneration is to be paid while he is working outside the United Kingdom;

(iii) any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom; and

(iv) any terms and conditions relating to his return to the United Kingdom.

(4) Paragraph (3)(d)(iii) shall not apply to the employees of any body or authority if—

(a) the employees' pension rights depend on the terms of a pension scheme established under any statutory provision; and

(b) the body or authority is required by any such provision to give to new employees information concerning their pension rights or the determination of questions affecting their pension rights.

Article 43: supplementary

43A.—(1) If, in the case of a statement under Article 43, there are no particulars to be entered under any of the heads of sub-paragraph (d) or (k) of paragraph (3) of that Article, or under any of the other sub-paragraphs of paragraph (2) or (3) of that Article, that fact shall be stated.

(2) A statement under Article 43—

(a) may refer the employee to the provisions of some other document which—

(i) the employee has reasonable opportunities of reading in the course of his employment; or

(ii) is made reasonably accessible to him in some other way,

for particulars of any of the matters specified in Article 43(3)(d)(ii) and (iii); and

(b) may refer the employee to the law, or, subject to paragraph (3), to the provisions of any collective agreement which directly affects the terms and conditions of the employment, for particulars of either of the matters specified in Article 43(3)(e).

(3) A statement under Article 43 may refer the employee to the provisions of a collective agreement under paragraph (2)(b) if, and only if, it is an agreement which—

(a) the employee has reasonable opportunities of reading in the course of his employment; or

(b) is made reasonably accessible to him in some other way.

(4) The particulars required by Article 43(2) and the following provisions of Article 43(3)—

(a) sub-paragraphs (a) to (c);

(b) sub-paragraph (d)(i);

(c) sub-paragraph (f); and

(d) sub-paragraph (h),

shall be included in a single document (in Article 43C referred to as the “principal statement”).

(5) Where before the end of the period of two months after the beginning of his employment an employee is to begin to work outside the United Kingdom for a period of more than one month, the statement under Article 43 shall be given to him not later than the time when he leaves the United Kingdom in order to begin so to work.

(6) A statement shall be given to a person under Article 43 notwithstanding that his employment ends before the end of the period within which the statement is required to be given.

Statement to include note about disciplinary procedures

43B.—(1) A statement under Article 43 shall include a note—

(a) specifying any disciplinary rules applicable to the employee or referring the employee to the provisions of a document which—

(i) the employee has reasonable opportunities of reading in the course of his employment; or

(ii) is made reasonably accessible to him in some other way,

and which specifies such rules;

(b) specifying, by description or otherwise—

(i) a person to whom the employee can apply if he is dissatisfied with any disciplinary decision relating to him; and

(ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment,

and the manner in which any such application should be made;

(c) where there are further steps consequent on any such application, explaining those steps or referring to the provisions of a document which—

(i) the employee has reasonable opportunities of reading in the course of his employment; or

(ii) is made reasonably accessible to him in some other way,

and which explains them; and

(d) stating whether a contracting-out certificate is in force for the employment.

(2) Paragraph (1)(a) to (c) shall not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.

(3) The note need not comply with the following provisions of paragraph (1)—

(a) sub-paragraph (a);

(b) in sub-paragraph (b), head (i) and the words following head (ii) so far as relating to head (i); and

(c) sub-paragraph (c),

if on the date when the employee's employment began the relevant number of employees was less than twenty.

(4) In paragraph (3) "the relevant number of employees", in relation to an employee, means the number of employees employed by his employer added to the number of employees employed by any associated employer.

Employer's duty to give statement of changes

43C.—(1) If, after the date to which a statement given under Article 43 relates, or, where no such statement is given, after the end of the period within which a statement under Article 43 is required to be given, there is a change in any of the matters particulars of which are required by Articles 43 to 43B to be included or referred to in a statement under Article 43, the employer shall at the earliest opportunity and, in any event, not later than—

(a) one month after the change; or

(b) where the change results from the employee being required to work outside the United Kingdom for a period of more than one month, the time when he leaves the United Kingdom in order to begin so to work, if that is earlier,

give to the employee a written statement containing particulars of the change.

(2) In a case where the statement under Article 43 is given in instalments, paragraph (1) applies—

(a) in relation to—

(i) matters particulars of which are required to be (whether they are or not) included in the instalment comprising the principal statement; and

(ii) other matters particulars of which are included or referred to in that instalment;

(b) in relation to matters particulars of which are included or referred to in any other instalment; and

(c) in relation to any change occurring after the end of the two-month period within which a statement under Article 43 is required to be given in matters particulars of which were required to be included in the statement given under Article 43 but which were not included in any instalment,

as it applies in relation to matters particulars of which are required to be included or referred to in a statement under Article 43 not given in instalments.

(3) A statement under paragraph (1)—

(a) may refer the employee to the provisions of some other document which—

(i) the employee has reasonable opportunities of reading in the course of his employment; or

(ii) is made reasonably accessible to him in some other way,

for a change in any of the matters specified in Article 43(3)(d)(ii) and (iii) and 43B(1)(a) and (c); and

(b) may refer the employee to the law, or, subject to paragraph (4), to the provisions of any collective agreement which directly affects the terms and conditions of the employment, for a change in either of the matters specified in Article 43(3)(e).

(4) A statement under paragraph (1) may refer the employee to the provisions of a collective agreement under paragraph (3)(b) if, and only if, it is an agreement which—

(a) the employee has reasonable opportunities of reading in the course of his employment; or

(b) is made reasonably accessible to him in some other way.

(5) Where after an employer has given to an employee a statement under Article 43—

(a) either—

(i) the name of the employer (whether an individual or a body corporate or partnership) is changed without any change in the identity of the employer; or

(ii) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken; and

(b) the change does not involve any change in any of the matters (other than the names of the parties) particulars of which are required by Articles 43 to 43B to be included in the statement,

the person who immediately after the change is the employer shall not be required to give to the employee a statement under Article 43 but the change shall be treated as a change falling within paragraph (1).

(6) A statement under paragraph (1) which informs an employee of a change such as is referred to in paragraph (5)(a)(ii) shall specify the date on which the employee's period of continuous employment began.

Exclusion of Articles 43 to 43C in case of certain employees

43D.—(1) Articles 43 to 43C shall not apply to an employee if—

(a) his employment continues for less than one month; or

(b) he is employed under a contract which normally involves employment for less than eight hours weekly.

(2) Articles 43 to 43C shall apply to an employee who at any time comes or ceases to come within the exceptions from those Articles provided for by paragraph (1)(b) and Article 49(3A), and under Article 49(11), as if his employment with his employer terminated or began at that time.

(3) The fact that Article 43 is directed by paragraph (2) to apply to an employee as if his employment began on his ceasing to come within the exceptions referred to in that paragraph shall not affect the obligation under Article 43(2)(b) to specify the date on which his employment actually began.

Power of Department to require particulars of further matters

43E. The Department may by order provide that Article 43 shall have effect as if particulars of such further matters as may be specified in the order were included in the particulars required by that Article; and, for that purpose, the order may include such provisions amending that Article as appear to the Department to be expedient.

PART II

ARTICLE 47 OF THE NO. 2 ORDER, AS SUBSTITUTED

Enforcement of rights under Articles 43 to 45

References to industrial tribunals

47.—(1) Where an employer does not give an employee a statement as required by Article 43 or 43C(1) or 44 (that is to say, either because he gives him no statement or because the statement he gives does not comply with those requirements) the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the relevant Article.

(2) Where—

(a) a statement purporting to be a statement under Article 43 or 43C(1); or

(b) a pay statement, or a standing statement of fixed deductions, purporting to comply with Article 44 or 45(1),

has been given to an employee, and a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of the relevant Article, either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.

(3) In this Article, a question as to the particulars which ought to have been included—

(a) in a pay statement, or in a standing statement of fixed deductions, does not include a question solely as to the accuracy of an amount stated in any such particulars;

(b) in the note required by Article 43B to be included in the statement under Article 43, does not include any question whether the employment is, has been or will be contracted-out employment for the purposes of Part IV of the Social Security Pensions (Northern Ireland) Order 1975.

(4) Where, on a reference under paragraph (1), an industrial tribunal determines particulars as being those which ought to have been included or referred to in a statement given under Article 43 or 43C(1), the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.

(5) On determining a reference under paragraph (2)(a), an industrial tribunal may either confirm the particulars as included or referred to in the statement given by the employer, or may amend those particulars, or may substitute other particulars for them, as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the tribunal.

(6) Where on a reference under this Article an industrial tribunal finds that an employer has failed to give an employee any pay statement in accordance with Article 44 or that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that Article or Article 45(1)—

(a) the tribunal shall make a declaration to that effect; and

(b) where the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

In this paragraph "unnotified deduction" means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction required by Article 44 or 45(1).

(7) An industrial tribunal shall not entertain a reference under this Article in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—

(a) before the end of the period of three months beginning with the date on which the employment ceased; 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 application to be made before the end of that period of three months.

SCHEDULE 3 Article 6.

EMPLOYMENT RIGHTS IN HEALTH AND SAFETY CASES

PART I

ARTICLES 13A TO 13D OF THE NO. 2 ORDER, AS INSERTED

Right not to suffer detriment in health and safety cases

Right not to suffer detriment in health and safety cases

13A.—(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 done on the ground 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, he 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 a member of a safety committee—

(i) in accordance with arrangements established under any statutory provision; or

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

he 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 he 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 he 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 shall 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) An employee shall not be regarded as having been subjected to any detriment on the ground specified in paragraph (1)(e) 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 treated him as the employer did.

(4) Except where an employee is dismissed in circumstances in which, by virtue of Article 25 of the No. 1 Order, Article 20 of that Order does not apply to the dismissal, this Article shall not apply where the detriment in question amounts to dismissal.

Proceedings for contravention of Article 13A

13B.—(1) An employee may present a complaint to an industrial tribunal on the ground that he has been subjected to a detriment in contravention of Article 13A.

(2) On such a complaint it shall be for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) 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 act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them; or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

(4) For the purposes of paragraph (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period; and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

Remedies

13C.—(1) Where the industrial tribunal finds that a complaint under Article 13B is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid to the complainant in respect of the act or failure to act complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss which is attributable to the act or failure which infringed his right.

(3) The loss shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the act or failure complained of; and

(b) loss of any benefit which he might reasonably be expected to have had but for that act or failure.

(4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) Where the tribunal finds that the act or failure complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

Power to extend Articles 13A to 13C

13D. The Department may by order provide that, subject to any such modifications and exceptions as may be prescribed in the order, Articles 13A to 13C (and any other provisions in this Order or the No. 1 Order so far as relating to those Articles) shall apply to such descriptions of persons other than employees as may be prescribed in the order as they apply to employees (but as if references to their employer were references to such person as may be so prescribed).

PART II

ARTICLE 22B OF THE NO. 1 ORDER, AS INSERTED

Dismissal in health and safety cases

22B.—(1) The dismissal of an employee by an employer shall be regarded for the purposes of this Order as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, 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 a member of a safety committee—

(i) in accordance with arrangements established under any statutory provision; or

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

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,

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 he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, 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 he reasonably believed to be serious and imminent, 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 shall 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 was that specified in paragraph (1)(e), the dismissal shall not be regarded as having been unfair 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.

PART III

ARTICLES 33 TO 34 OF THE NO. 1 ORDER, AS SUBSTITUTED

Compensation for unfair dismissal

33.—(1) Subject to paragraph (2), where an industrial tribunal makes an award of compensation for unfair dismissal under Article 32(2)(a) or (5) the award shall consist of—

(a) a basic award calculated in accordance with Article 34; and

(b) a compensatory award calculated in accordance with Article 36.

(2) In a case where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in Article 22A(1) or 22B(1)(a) and (b), then, unless—

(a) the complainant does not request the tribunal to make an order under Article 31; or

(b) the case falls within Article 34(2),

the award shall include a special award calculated in accordance with Article 37A.

Matters to be disregarded in assessing contributory fault

33A.—(1) Where an industrial tribunal makes an award of compensation for unfair dismissal under Article 32(2)(a) or (5) in a case where the dismissal is unfair by virtue of Article 22A or 22C(1)(a), the tribunal shall disregard, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, any such conduct or action of the complainant as is specified below.

(2) Conduct or action of the complainant shall be disregarded in so far as it constitutes a breach or proposed breach of a requirement—

(a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions;

(b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions; or

(c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.

For the purposes of this paragraph a requirement means a requirement imposed on the complainant by or under an arrangement or contract of employment or other agreement.

(3) Conduct or action of the complainant shall be disregarded in so far as it constitutes a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in Article 22A(14)(a), or an objection, or proposed objection, (however expressed) to the operation of a provision of a kind mentioned in Article 22A(14)(b).

Calculation of basic award

34.—(1) The amount of the basic award shall be the amount calculated in accordance with paragrahs (3) to (9), subject to—

(a) paragraph (2) (which provides for an award of two weeks' pay in certain redundancy cases);

(b) paragraph (10) (which provides for the amount of the award to be reduced where the employee has unreasonably refused an offer of reinstatement);

(c) paragraph (11) (which provides for the amount of the award to be reduced because of the employee's conduct);

(d) paragraph (13) (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and

(e) Article 38 (which prohibits double compensation where compensation in respect of the same matter is also awarded under certain other statutory provisions).

(2) The amount of the basic award shall be two weeks' pay where the industrial tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—

(a) by virtue of section 12(5) or (6) of the Act of 1965 is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or

(b) by virtue of the operation of section 13(3) of that Act is not treated as dismissed for the purposes of Part II of that Act.

(3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the number of years of employment falling within that period, and allowing—

(a) one and a half weeks' pay for each such year of employment in which the employee was not below the age of forty-one;

(b) one week's pay for each such year of employment not falling within sub-paragraph (a) in which the employee was not below the age of twenty-two; and

(c) half a week's pay for each such year of employment not falling within either of sub-paragraphs (a) and (b).

(4) In ascertaining for the purpose of paragraph (3) the period for which an employee has been continuously employed, where the effective date of termination falls to be determined in accordance with Article 21(5) or, as the case may be, (6) a period falling within such an interval as is referred to in Article 68(2) shall count as a period of employment notwithstanding that it does not count under Schedule 1 to the Act of 1965.

(5) Where, in reckoning the number of years of employment in accordance with paragraph (3), twenty years of employment have been reckoned no account shall be taken of any year of employment earlier than those twenty years.

(6) Where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in Article 22A(1) or 22B(1)(a) and (b), the amount of the basic award (before any reduction under the following provisions of this Article) shall not be less than #2,700.

(7) The Department may by order increase the sum specified in paragraph (6).

(8) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with paragraphs (3) to (5) shall be reduced by the appropriate fraction.

(9) In paragraph (8) "the specified anniversary" in relation to an employee means the sixty-fourth anniversary of the date of his birth and "the appropriate fraction" means the fraction of which—

(a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and

(b) the denominator is twelve.

(10) Where the industrial tribunal finds that the complainant has unreasonably refused an offer by the employer which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(11) Where the industrial tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it

would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(12) Paragraph (11) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in Article 22A(1) or 22B(1)(a) and (b); and, in that event, paragraph (11) shall apply only to so much of the basic award as is payable because of paragraph (6).

(13) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the industrial tribunal under the Act of 1965 in respect of the same dismissal or of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of the Act of 1965 or otherwise.

PART IV

ARTICLES 39 TO 41 OF THE NO. 1 ORDER, AS SUBSTITUTED

Interim relief

Interim relief pending determination of complaint of unfair dismissal

39.—(1) An employee who presents a complaint to an industrial tribunal under Article 29 alleging —

(a) that the dismissal is unfair by virtue of Article 22A; or

(b) that the reason (or, if more than one, the principal reason) for the dismissal was one of those specified in Article 22B(1)(a) and (b),

may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) In a case where the employee relies on Article 22A(1)(a) or (b) the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—

(a) that on the date of the dismissal the employee was or proposed to become a member of the union; and

(b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(4) An "authorised official" means an official of the trade union authorised by it to act for the purposes of this Article.

(5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this Article and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

(6) For the purposes of paragraph (3) the date of dismissal shall be taken to be—

(a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), the date on which the notice was given; and

(b) in any other case, the effective date of termination.

(7) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application and, where appropriate, the requisite certificate.

(8) The tribunal shall give to the employer (not later than seven days before the date of the hearing) a copy of the application and of any certificate together with notice of the date, time and place of the hearing.

(9) If a request under Article 38A is made three days or more before the date of the hearing, the tribunal shall also give to the person to whom the request relates, as soon as reasonably practicable, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.

(10) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

Procedure on hearing of application and making of order

39A.—(1) If on hearing an employee's application for interim relief it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—

(a) that, by virtue of Article 22A, the employee has been unfairly dismissed; or

(b) that the reason (or, if more than one, the principal reason) for the employee's dismissal was one of those specified in Article 22B(1)(a) and (b),

the following provisions shall apply.

(2) The tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on the application and in what circumstances it will exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—

(a) to reinstate the employee, that is to say, to treat him in all respects as if he had not been dismissed; or

(b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(3) For this purpose "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.

(4) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

(5) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions; and—

(a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect; and

(b) if he is not, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order.

(6) If on the hearing of an application for interim relief the employer fails to attend before the tribunal, or states that he is unwilling either to reinstate the employee or re-engage him as mentioned in paragraph (2), the tribunal shall make an order for the continuation of the employee's contract of employment.

Orders for continuation of contract of employment

40.—(1) An order under Article 39A for the continuation of a contract of employment is an order that the contract of employment continue in force—

(a) for the purposes of pay or of any other benefit derived from the employment, seniority, pension rights and other similar matters; and

(b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,

from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.

(2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.

(3) Subject as follows, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—

(a) in the case of payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period; and

(b) in the case of a payment for any past period, within such time as may be specified in the order.

(4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.

(5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, shall go towards discharging the employer's liability in respect of that period under paragraph (2); and, conversely, any payment under that paragraph in respect of a period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

(6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.

(7) For the purposes of this Article, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

Application for variation or revocation of order

40A.—(1) At any time between the making of an order under Article 39A and the determination or settlement of the complaint, the employer or the employee may apply to an industrial tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.

(2) Articles 39 and 39A apply in relation to such an application as in relation to an original application for interim relief, except that—

(a) no certificate need be presented to the tribunal under Article 39(3); and

(b) in the case of an application by the employer, Article 39(8) has effect with the substitution of a reference to the employee for the reference to the employer.

Consequence of failure to comply with order

41.—(1) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under Article 39A(4) or (5), the tribunal shall—

(a) make an order for the continuation of the employee's contract of employment; and

(b) order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard—

(i) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order; and

(ii) to any loss suffered by the employee in consequence of the non-compliance.

(2) Article 40 applies to an order under paragraph (1)(a) as in relation to an order under Article 39A.

(3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, the following provisions apply.

(4) If the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount owed by the employer on the date of the determination.

(5) If on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.

(6) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

SCHEDULE 4

Article 16(4).

COMPROMISE CONTRACTS

The Sex Discrimination (Northern Ireland) Order 1976 (NI 15)

1. In Article 77—

(a) in paragraph (4), after sub-paragraph (a), there shall be inserted—

"(aa) to a contract settling a complaint to which Article 63(1) of this Order or section 2 of the Equal Pay Act applies if the conditions regulating compromise contracts under this Order are satisfied in relation to the contract;"; and

(b) after paragraph (4) there shall be inserted—

"(4A) The conditions regulating compromise contracts under this Order are that—

(a) the contract must be in writing;

(b) the contract must relate to the particular complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(e) the contract must identify the adviser; and

(f) the contract must state that the conditions regulating compromise contracts under this Order are satisfied.

(4B) In paragraph (4A)—

"independent", in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

"qualified lawyer" means—

(a) a barrister, whether in practice as such or employed to give legal advice; or

(b) a solicitor of the Supreme Court who holds a practising certificate.

(4C) For the purposes of paragraph (4B) any two persons are to be treated as "connected" if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

The Industrial Relations (No. 2) (Northern Ireland) Order 1976 (NI 28)

2. In Article 59—

(a) in paragraph (2) at the end there shall be added—

"(e) to any agreement to refrain from instituting or continuing any proceedings specified in Article 56(2)(a) or (b) before an industrial tribunal if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement."; and

(b) after paragraph (2) there shall be added—

"(3) 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 complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer 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 policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.

(4) In paragraph (3)—

"independent", in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

"qualified lawyer" means—

(a) a barrister, whether in practice as such or employed to give legal advice; or

(b) a solicitor of the Supreme Court who holds a practising certificate.

(5) For the purposes of paragraph (4) any two persons are to be treated as "connected" if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

The Wages (Northern Ireland) Order 1988 (NI 7)

3. In Article 8—

(a) in paragraph (3) after the words "apply to" there shall be inserted "(a)" and at the end of the words so constituted sub-paragraph (a) there shall be inserted the words

"; or

(b) an agreement to refrain from presenting or continuing with a complaint if the conditions regulating compromise agreements under this Part are satisfied in relation to the agreement"; and

(b) after paragraph (3) there shall be added—

"(4) The conditions regulating compromise agreements under this Part are that—

(a) the agreement must be in writing;

(b) the agreement must relate to the particular complaint;

(c) the worker must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his complaint before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the worker in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions regulating compromise agreements under this Part are satisfied.

(5) In paragraph (4)—

"independent", in relation to legal advice to the worker, means that it is given by a lawyer who is not acting in the matter for the employer or for a person who is connected with the employer; and

"qualified lawyer" means—

(a) a barrister, whether in practice as such or employed to give legal advice; or

(b) a solicitor of the Supreme Court who holds a practising certificate.

(6) For the purposes of paragraph (5) any two persons are to be treated as "connected" if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

The Industrial Relations (Northern Ireland) Order 1992 (NI 5)

4. After Article 105 insert—

"Restrictions on contracting out

Restrictions on contracting out

105A.—(1) Except as provided by paragraph (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Order;

(b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Order before, an industrial tribunal; or

(c) to preclude any person from making any reference, claim or complaint under Part V.

(2) Paragraph (1) does not apply—

(a) to any agreement to refrain from instituting or continuing any proceedings where the Agency has taken action in accordance with Article 62(2) or (5) of the No. 1 Order;

(b) to any agreement such as is referred to in Article 43(6)(b) or (c) to the extent that it varies or supersedes an award under that Article; or

(c) to any agreement to refrain from instituting or continuing any proceedings arising out of a contravention or alleged contravention of Article 29 or 34 before an industrial tribunal if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement.

(3) 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 complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer 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 policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.

(4) In paragraph (3)—

"independent", in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

"qualified lawyer" means—

(a) a barrister, whether in practice as such or employed to give legal advice; or

(b) a solicitor of the Supreme Court who holds a practising certificate.

(5) For the purposes of paragraph (4) any two persons are to be treated as "connected" if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

SCHEDULE 5

Article 18(1).

MISCELLANEOUS AMENDMENTS

Restrictions on disclosure of information, etc. on grounds of national security

1. In Article 59 of the No. 1 Order after paragraph (4) insert—

"(4A) Without prejudice to paragraph (7), Article 30 of this Order or Article 35(3) of the No. 2 Order, the Secretary of State may on grounds of national security direct an

industrial tribunal to sit in private when hearing or determining any proceedings specified in the direction.”.

2. After Article 78 of the No. 1 Order insert—

“**National security**

78A.—(1) Where in the opinion of the Secretary of State the disclosure of any information would be contrary to the interests of national security—

(a) nothing in any of the provisions to which this Article applies shall require 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) Articles 20 to 41 so far as relating to a dismissal which is regarded as unfair by reason of Article 22B or 22C(1)(b), (c) or (d) of the No. 1 Order or Article 29 of the No. 2 Order;

(b) Article 48(2B);

(c) Part V so far as relating to any of the provisions in sub-paragraphs (a) and (b).”.

3. After Article 59 of the No. 2 Order insert—

“**National security**

59A.—(1) Where in the opinion of the Secretary of State the disclosure of any information would be contrary to the interests of national security—

(a) nothing in any of the provisions to which this Article applies shall require 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) Articles 13A to 13C;

(b) Articles 14 to 32;

(c) Article 41A;

(d) Articles 43 to 43E and Article 47 so far as relating to Articles 43 to 43E;

(e) Part IV so far as relating to any of the provisions in sub-paragraphs (a) to (d).”.

4. In Article 30(2) of the No. 1 Order for “A certificate” substitute “Except where the complaint is that a dismissal is unfair by reason of Article 22B or 22C(1)(b), (c) or (d) of this Order or Article 29 of the No. 2 Order, a certificate”.

Power to provide for continuity of employment following reinstatement or re-engagement

5. In Article 68 of the No. 1 Order—

(a) in paragraph (5)(a) for “complaint under Article 29” substitute “relevant complaint of dismissal”;

(b) in paragraph (5)(c) for “Article 62(5)” substitute “its relevant conciliation powers; or”;

(c) in paragraph (5) after sub-paragraph (c) add—

“(d) of the making of a relevant compromise contract.”; and

(d) at the end add—

“(6) In paragraph (5)—

“relevant complaint of dismissal” means a complaint under Article 29 of this Order or a complaint under Article 63 of the Sex Discrimination (Northern Ireland) Order 1976 arising out of a dismissal;

“relevant conciliation powers” means Article 62(5) of this Order or Article 64(2) of the Sex Discrimination (Northern Ireland) Order 1976;

“relevant compromise contract” means an agreement or contract authorised by Article 78(2)(f) of this Order, Article 77(4)(aa) of the Sex Discrimination (Northern Ireland) Order 1976 or Article 59(2)(d) or (e) of the No. 2 Order.”.

Codes of practice on employment: use in proceedings

6. In Article 56A(9) of the Sex Discrimination (Northern Ireland) Order 1976(**27**) after “this Order” insert “or the Equal Pay Act”.

Assembly procedure: orders modifying application of redundancy provisions

7. In section 59 of the Act of 1965 in subsection (2) after “58A” insert “(other than an order to which subsection (2A) applies)” and after that subsection insert—

“(2A) An order under section 58A(a) which specifies only provisions in Part II, III or IV shall be subject to negative resolution.”.

SCHEDULE 6

Article 18(2).

CONSEQUENTIAL AMENDMENTS

The Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (c. 19 (N.I.))

For section 6 substitute—

“**Excluded categories of employees.**

6. Sections 1 and 2 do not apply—

(a) in relation to employment during any period when the employee is engaged in work wholly or mainly outside Northern Ireland unless—

(i) the employee ordinarily works in Northern Ireland and the work outside Northern Ireland is for the same employer; or

(ii) the law which governs his contract of employment is the law of Northern Ireland;

(b) to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State.”.

In section 58A(b) for “4(9) to (11A), 6(1)” substitute “6”.

(**27**) 1976 NI 15

In section 63(1) in the definition of "the Ministry" for the words "has the meaning assigned to it by section 4(12)" substitute "means the Department of Economic Development".

In Schedule 1 in paragraph 5(1)(d) for "confinement" substitute "childbirth".

In Schedule 1 for paragraph 5A substitute—

"**5A.** If an employee returns to work in accordance with Article 20 of the No. 2 Order or in pursuance of an offer made in the circumstances described in Article 31(2) of that Order after a period of absence from work wholly or partly occasioned by pregnancy or childbirth, every week during that period shall count in computing a period of employment, notwithstanding that it does not fall under paragraph 3, 4 or 4A.".

In Schedule 2 in paragraph 2(1) after head (b) insert—

"(b) the employee is absent from work wholly or partly because of pregnancy or childbirth; or".

In Schedule 2 in paragraph 2(1) after "heads (a), (b)" insert ", (b)".

In Schedule 2 in paragraphs 2(2) and 3(3) after "statutory sick pay" insert "maternity pay, statutory maternity pay,".

In Schedule 2 in paragraph 3(3) after head (a) insert—

"(aa) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth; or".

The Industrial Relations (Northern Ireland) Order 1976 (NI 16)

In Article 22(3) for "Article 14" substitute "Article 29".

For Article 22C substitute—

"**Dismissal on ground of redundancy**

22C.—(1) Where the reason or principal reason for the dismissal of an employee was that the employee was redundant, but 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—

(a) that 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 22A(1); or

(b) that 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 22B(1) (read with (2) and (3)); or

(c) that 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 22D(1)(read with (2) and (3)); or

(d) that 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 29(a) to (e) of the No. 2 Order; or

(e) that the employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in the case of the employee,

then, for the purposes of this Order, the dismissal shall be regarded as unfair.

(2) For the purposes of this Part "a redundancy case" means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees is also shown.".

In Article 23 after paragraph (2) insert—

"(2A) Paragraph (2) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in Article 22B(1) (read with (2) and (3)) of this Order or in Article 29 of the No. 2 Order.".

In Article 23(3) for "22C and of Article 14" substitute "22D and of Article 29".

For Article 24 substitute—

"**Qualifying period and upper age limit**

24.—(1) Subject to the following provisions of this Article, Article 20 does not apply to the dismissal of an employee from any employment if the employee—

(a) was not continuously employed for a period of not less than two years ending with the effective date of termination; or

(b) attained the following age on or before the effective date of termination, that is to say—

(i) if in the undertaking in which he was employed there was a normal retiring age for an employee holding the position which he held and the age was the same whether the employee holding that position was a man or a woman, that normal retiring age; and

(ii) in any other case, the age of sixty-five.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in Article 9(1) of the No. 2 Order, paragraph (1)(a) shall have effect in relation to that dismissal as if for the words "two years" there were substituted "one month".

(3) Paragraph (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified—

(a) in Article 22A(1);

(b) in Article 22B(1) (read with (2) and (3));

(c) in Article 22D(1) (read with (2) and (3)); or

(d) in Article 29(a) to (e) of the No. 2 Order.

(4) Paragraph (1) shall not apply to a case falling within Article 29(f) of the No. 2 Order.

(5) The Department may by order add to, vary, revoke or exclude the operation of any of the provisions of paragraph (1).".

In Article 26 at the end add—

"(4) Paragraph (3) shall not apply to the right conferred by Article 22D(1) (read with (2) and (3)) of this Order or by Article 29 of the No. 2 Order.".

In Article 32(2)(b) for the words from the beginning to "or in which" substitute "unless the case is one where this sub-paragraph is excluded or".

In Article 32 after paragraph (2) insert—

"(2A) Paragraph (2)(b) is excluded where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was one of those specified in—

(a) Article 22A(1); or

(b) Article 22B(1)(a) and (b).".

In Article 36(3) for "Article 35(6A) to (7)" substitute "Article 34(10) to (13)".

In Article 36(7) for "Article 35(7)" substitute "Article 34(13)".

In Article 37A(3) for "Article 34(6)" substitute "Article 34(8)".

In Article 37A at the end add—

"(8) For the purposes of Part II of Schedule 2 as it applies for the calculation of a week's pay for the purposes of this Article, the calculation date is—

(a) where the dismissal was with notice, the date on which the employer's notice was given;

(b) where sub-paragraph (a) does not apply, the effective date of termination.".

In Article 42(4) after sub-paragraph (c) insert—

"(ca) remuneration on suspension on maternity grounds under Article 28 of the No. 2 Order;".

In Article 48 after paragraph (2A) insert—

"(2B) An employee shall be entitled (without making any request and irrespective of whether or not she has been continuously employed for any period) to be provided by her employer with a written statement giving particulars of the reasons for her dismissal if she is dismissed—

(a) at any time while she is pregnant; or

(b) after childbirth in circumstances in which her maternity leave period ends by reason of the dismissal.".

In Article 48(4) for "refused to provide a written statement under paragraph (1)" substitute "failed to provide a written statement under this Article" and for "that paragraph" substitute "this Article".

In Article 59(2A) for sub-paragraph (a) substitute—

"(a) for authorising the carrying out by an industrial tribunal of a preliminary consideration of any proceedings before it ("a pre-hearing review"); and".

In Article 59 after paragraph (2C) insert—

"(2D) The regulations may also include provision for authorising an industrial tribunal to hear and determine any issue relating to the entitlement of any party to proceedings to bring or contest the proceedings in advance of the hearing and determination of the proceedings by that or any other industrial tribunal.".

In Article 59(4)(b) for "confinement" substitute "childbirth".

In Article 80(2) for "24(3)" substitute "24(5)", for "34(5B)" substitute "34(7)" and after "56(4)," insert "58A(4),".

The Industrial Relations (No. 2) (Northern Ireland) Order 1976 (NI 28)

In Article 2(2) after "this Order" insert ", the No. 1 Order and the Act of 1965" and at the appropriate places in alphabetical order insert the following definitions—

"childbirth" means the birth of a living child or the birth of a child whether living or dead after twenty-four weeks of pregnancy;

"expected week of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;

"maternity leave period" shall be construed in accordance with Articles 15 and 16;

"notified day of return" shall be construed in accordance with Article 24(3) and (4);

"notified leave date" shall be construed in accordance with Article 17.

In Article 2 after paragraph (3) insert—

"(3A) For the purposes of Articles 43 to 43D and Article 47 so far as relating to those Articles, the definition of "employee" in Article 2(2) of the No. 1 Order shall have effect with the omission of the words "otherwise than in police service"."

In Article 13(b) for "other employee to resume his original work" substitute "resumption of work by the other employee".

In Article 49(2) for the words from the beginning to "44" substitute "Articles 3 to 42 and 44".

In Article 49 after paragraph (3) insert—

"(3A) Articles 43 to 43C do not apply—

(a) in relation to employment during any period when the employee is engaged in work wholly or mainly outside Northern Ireland unless—

(i) the employee ordinarily works in Northern Ireland and the work outside Northern Ireland is for the same employer; or

(ii) the law which governs his contract of employment is the law of Northern Ireland;

(b) to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State.".

In Article 56(2) after "9" insert ", 13A, 27, 28".

In Article 59(2) at the end add—

"(d) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where the tribunal has jurisdiction in respect of the proceedings by virtue of an order under Article 57.".

In Article 63(2) for "15(5)" substitute "13D, 15(3), 16(4), 20(3),".

In Schedule 2 in paragraph 2(1), in the substituted paragraph (3), for the words from "Article 22A(1)" to "Article 14" substitute "Articles 22A to 23 and to Article 29".

In Schedule 2 in paragraph 2(2) for "Article 28(4)" substitute "Article 22(1)".

In Schedule 2 in paragraph 2(4) for "Article 34(4), (6) and (7)" substitute "Article 34(4), (8) and (9)".

In Schedule 2 in paragraph 2(5) for "the original contract of employment" substitute "her contract of employment immediately before the beginning of her maternity leave period".

In Schedule 2 in paragraph 3(1) for head (c) substitute—

"(c) the reference in section 13(5) of that Act (trial period) to the provisions of the previous contract shall be construed as a reference to the provisions of the contract under which the employee worked immediately before the beginning of her maternity leave period.".

In Schedule 2 in paragraph 3(4) for "the original contract of employment" substitute "her contract of employment immediately before the beginning of her maternity leave period".

In Schedule 2 in paragraph 4 for sub-paragraph (1) subsitute—

"(1) This paragraph applies where an employee has the right to return to work under Article 20 and either her maternity leave period ends by reason of dismissal or she is dismissed after her maternity leave period.".

In Schedule 2 in paragraph 4(2) for "during the period of her absence" substitute "after her maternity leave period" and for "paragraph 5" substitute "Article 25".

In Schedule 2 in paragraph 6 after "return to work" insert "in accordance with Article 23" and for the words from "during her absence" to "confinement" substitute "on a day falling after the commencement of her maternity leave period and before the notified day of return".

In Schedule 2 in paragraph 7 after "Schedule" insert "and Article 25".

The Wages (Northern Ireland) Order 1988 (NI 7)

In Article 8(2) for "47(5)(b)" substitute "47(6)(b)".

In Article 9(1)(c) for "Article 39" substitute "Article 39A".

In Article 26(1) and (3) for "Parts II and III do" substitute "Part II does".

The Insolvency (Northern Ireland) Order 1989 (NI 19)

In Schedule 4 in paragraph 13(2)(b) after "1976" insert "or remuneration on suspension on maternity grounds under Article 28 of that Order".

The Industrial Relations (Northern Ireland) Order 1992 (NI 5)

In Articles 30(7) and 36(6) for "Article 34(5A)" substitute "Article 34(6)".

SCHEDULE 7

Article 18(3).

TRANSITIONAL PROVISIONS AND SAVINGS

General

1.—(1) An order under Article 1 may contain such transitional provisions and savings as appear to the Department of Economic Development to be appropriate.

(2) Nothing in the following provisions of this Schedule prejudices the generality of sub-paragraph (1).

(3) Nothing in this Schedule prejudices the operation of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954(**28**).

Employment particulars

2.—(1) In this paragraph "existing employee" means an employee whose employment with his employer has begun before the day on which Article 4 comes into operation ("the appointed day") (whether or not the provisions of section 4 of the Act of 1965 applied to him before that day).

(2) Subject to the following provisions of this paragraph, the provisions of Articles 43 to 43C of the No. 2 Order shall not apply to any existing employee.

(3) Where an existing employee, at any time—

(a) on or after the appointed day; and

(b) either before the end of his employment or within the period of three months beginning with the day on which his employment ends,

(**28**) 1954 c. 33 (N.I.)

requests from his employer a statement under Article 43 of the No. 2 Order, the employer shall (subject to Article 43D of that Order and any other provision disapplying or having the effect of disapplying Article 43) be treated as being required by Article 43 to give him a written statement under that Article, in accordance with the provisions of the No. 2 Order, not later than two months after the request is made; and Article 43C of that Order shall, subject as aforesaid, apply in relation to the existing employee after he makes the request.

(4) An employer shall not be required to give a statement under Article 43 of the No. 2 Order by virtue of sub-paragraph (3) to an existing employee on more than one occasion by virtue of that sub-paragraph.

(5) Where—

(a) on or after the appointed day there is in the case of any existing employee a change in any of the matters particulars of which would, had he been given a statement of particulars as at that day under Article 43 of the No. 2 Order, have been included or referred to in the statement; and

(b) he has not previously requested a statement under sub-paragraph (3),

paragraphs (1) and (5) of Article 43C of the No. 2 Order shall be treated (subject to Article 43D of that Order and any other provision disapplying or having the effect of disapplying Article 43C) as requiring his employer to give him a written statement containing particulars of the change at the time specified in paragraph (1) of Article 43C; and paragraphs (3) and (6) of that Article shall apply accordingly.

(6) Nothing in any statutory provision providing for the application of Articles 43 to 43C of the No. 2 Order to a person who comes or ceases to come within any of the exceptions from those Articles specified in that Order shall have effect in relation to an existing employee by reason of his coming or ceasing to come within that exception by virtue of Article 4.

Wages Councils

3.—(1) Notwithstanding the repeal of Part III of the Wages (Northern Ireland) Order 1988(**29**) by Article 13, the provisions of that Part specified or referred to below shall continue to have effect, on and after the day on which that Article comes into operation ("the appointed day"), in accordance with the following provisions.

(2) Article 17 (effect and enforcement of wages orders under Article 15) shall have effect in relation to a failure occurring or continuing on or after the appointed day to pay, with respect to any period ending before that day, an amount equal to or exceeding the statutory minimum remuneration as it has effect in relation to such a failure before the appointed day; and, subject to the following provisions, the other Articles of Part III which relate to Article 17 shall continue to have effect accordingly.

(3) Article 20(1) and (4) (obligation to keep records etc.) shall have effect on and after the appointed day as if—

(a) the reference to the provisions of Part III being complied with in relation to the payment of remuneration were a reference to their having been complied with in relation to payments of remuneration made—

(i) before the appointed day; or

(ii) on or after the appointed day with respect to any period ending before that day;

(b) the reference to deductions or payments made were references to deductions or payments so made; and

(**29**) 1988 NI 7

(c) in a case where the three-year retention period for records would end after the expiry of the period of six months beginning with the appointed day, the retention period were—

(i) that period of six months; or

(ii) if within that period of six months a court so orders, such longer period as is specified by the court;

and, subject to the following provisions, the other Articles of Part III which relate to Article 20 shall continue to have effect accordingly.

(4) Article 21 (officers) shall continue to have effect on and after the appointed day for the purposes of this paragraph; but—

(a) the powers conferred by paragraphs (3) and (4) shall not be exercisable after the end of the period of six months beginning with the appointed day; and

(b) paragraph (6) shall not authorise the institution of proceedings by an officer after the end of the period of six months beginning with the appointed day.

(5) Paragraph 4 of Schedule 3 shall continue to have effect on and after the appointed day in relation to orders under Article 15 made before that day.

(6) In the operation of any provision of Part III by virtue of this paragraph, references to a wages order applying shall have effect as references to an order under Article 15 having applied at any time before the appointed day.

SCHEDULE 8

Article 18(4).

REPEALS

Chapter or Number	Short Title	Extent of Repeal
1965 c. 19 (N.I.).	The Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965	Sections 4 and 5. Section 9.
1965 c. 20 (N.I.).	The Factories Act (Northern Ireland) 1965.	Section 115(4)(b).
1969 c. 48.	The Post Office Act 1969.	Section 81(1).
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Part III of Schedule 1 the entry beginning “Member of a Wages Council”.
1976 NI 16.	The Industrial Relations (Northern Ireland) Order 1976.	In Article 21(5) and (6) “24A,”. Article 35(6A) to (7). In Article 48(4) the words “against his employer”. In Article 49(5) the word “and” at the end of sub-paragraph (d). Article 52(3). Article 56(4A). In Article 59(2B)(a) the words “person or”. In Article 76(8) the words “Subject to paragraph (9),”. Article 76(9). Article 79. In Part II of

Chapter or Number	Short Title	Extent of Repeal
		Schedule 5, paragraphs 4 to 10. In Schedule 6, paragraph 6.
1976 NI 28.	The Industrial Relations (No. 2) (Northern Ireland) Order 1976.	In Article 8(1) the words "of the wages council making the order or". Article 8(2)(a). In Article 8(3)(a) the words "or such an order as is referred to in paragraph (2)(a)". In Article 8(5) the words "council or" and "in relation to the order in question". Article 9(4). In Article 56(2)(c) the words "or claims". Article 62. In Schedule 2, paragraph 5. In Schedule 4, paragraphs 3(6) and 5(9). In Schedule 5, paragraph 1.
1978 NI 9.	The Health and Safety at Work (Northern Ireland) Order 1978.	In Schedule 6, paragraphs 2 and 5(b).
1979 c. 36.	The Nurses, Midwives and Health Visitors Act 1979.	In Schedule 7, paragraph 38.
1980 c. 9.	The Reserve Forces Act 1980.	In Schedule 9, paragraphs 19 and 20.
1980 NI 17.	The Financial Provisions (Northern Ireland) Order 1980.	Article 3. Schedules 1 and 2.
1982 NI 8.	The Industrial Relations (Northern Ireland) Order 1982.	Article 11. Articles 13 and 14. In Schedule 2, the amendments to Schedule 1 to the Act of 1965 and to Articles 30(1) and 49(2) of the No. 2 Order.
1986 NI 18.	The Social Security (Northern Ireland) Order 1986.	In Schedule 9, paragraph 48.
1987 NI 9.	The Industrial Relations (Northern Ireland) Order 1987.	Article 6. Article 7(1) and (2). Article 8. Article 10. In Schedule 2, paragraphs 2 and 5. In Schedule 3, paragraph 4(2), (7) and (8).
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 175(4) the words "the Wages Councils (Northern Ireland) Order 1982".
1988 c. 12.	The Merchant Shipping Act 1988.	In Schedule 6, the amendment to the Act of 1965.
1988 NI 7.	The Wages (Northern Ireland) Order 1988.	Part III. Article 27(3). Schedules 2 and 3. In Schedule 4, paragraphs 3, 5 and 7. Schedule 6.

Chapter or Number	Short Title	Extent of Repeal
1988 NI 13.	The Sex Discrimination (Northern Ireland) Order 1988.	Article 5.
1989 NI 13.	The Social Security (Northern Ireland) Order 1989.	In Schedule 5, paragraph 15.
1992 NI 5.	The Industrial Relations (Northern Ireland) Order 1992.	Article 29(11). Article 35(6). Article 39(6) and (7). Article 40(3). Article 97. Article 105(3) and (4). In Schedule 5, paragraphs 5(1)(a) and (d), 5(2), 6(1)(a) and (e), 6(4) and (9) and 7(1)(a), (2) and (3).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made only for purposes to which section 54(1) of the Trade Union Reform and Employment Rights Act 1993 applies, amends the law relating to employment rights and the constitution and jurisdiction of industrial tribunals and abolishes the right to statutory minimum remuneration.