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STATUTORY INSTRUMENTS

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**1995 No. 1980**

**The Trade Union and Labour Relations  
(Northern Ireland) Order 1995**

**PART XI**

**MISCELLANEOUS AND GENERAL**

*Crown employment, etc.*

**Crown employment**

**141.**—(1) The provisions of this Order have effect (except as mentioned below) in relation to Crown employment and persons in Crown employment as in relation to other employment and other workers or employees.

(2) Paragraph (1) does not apply in relation to Article 61(3) (power of county court to make order in respect of employer's failure to comply with duties as to union contributions).

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

(4) For the purposes of the provisions of this Order as they apply in relation to Crown employment or persons in Crown employment—

- (a) "employee" and "contract of employment" means a person in Crown employment and the terms of employment of such a person;
- (b) "dismissal" means the termination of Crown employment;
- (c) any 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.

(5) This Article has effect subject to Article 142 (armed forces) and Article 143 (exemption on grounds of national security).

**Armed forces**

**142.**—(1) Article 141 (application of Order to Crown employment) does not apply to service as a member of the naval, military or air forces of the Crown.

(2) But that Article applies to employment by an association established for the purposes of Part VI of the Reserve Forces Act 1980(1) (territorial, auxiliary and reserve forces associations) as it applies to employment for the purposes of a government department.

### **Exemption on grounds of national security**

**143.**—(1) Article 141 (application of Order to Crown employment) does not apply to 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 that Article for the purpose of safeguarding national security or protecting public safety or public order.

(2) A document purporting to be such a certificate shall, unless the contrary is proved, be deemed to be such a certificate.

### *Health service practitioners*

#### **Health service practitioners**

**144.** In this Order “worker” includes an individual regarded in his capacity as one who works or normally works or seeks to work as a person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services in accordance with arrangements made by a Health and Social Services Board under Article 56, 61, 62 or 63 of the Health and Personal Social Services (Northern Ireland) Order 1972(2); and “employer”, in relation to such an individual, regarded in that capacity, means that Board.

### *Police service*

#### **Police service**

**145.**—(1) In this Order “employee” or “worker” does not include a person in police service.

(2) “Police service” means service as a member of the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve, or, subject to paragraph (3), in any other capacity by virtue of which a person has the powers or privileges of a constable.

(3) Service in the office of constable under Article 19 of the Airports (Northern Ireland) Order 1994(3) shall not be treated as police service for the purposes of this Article, and the holding of that office on any airport shall be treated for those purposes as work under a contract of employment with the airport operator.

### *Contracting out, etc.*

#### **Restriction on contracting out**

**146.**—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order, or
- (b) to preclude a person from bringing proceedings before an industrial tribunal under any provision of this Order.

(2) Paragraph (1) does not apply to an agreement to refrain from instituting or continuing proceedings where the Agency has taken action under Article 62(2) to (5) of the No. 1 Order (general provisions as to conciliation).

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(2) 1972 NI 14

(3) 1994 NI 1

(3) Paragraph (1) does not apply to an agreement to refrain from instituting or continuing any proceedings specified in Article 148 before an industrial tribunal if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement.

(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;
- (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.

### **Employment governed by foreign law**

**147.** For the purposes of this Order it is immaterial whether the law which (apart from this Order) governs any person’s employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

### *Industrial tribunal proceedings*

### **General provisions as to conciliation**

**148.** The provisions of Article 62(2) to (7) of the No. 1 Order (general provisions as to conciliation by Agency) have effect in relation to industrial tribunal proceedings, and claims which could be the subject of industrial tribunal proceedings, arising out of a contravention or alleged contravention of any of the following provisions of this Order—

- (a) Article 31 (right of trade union member not to be unjustifiably disciplined);
- (b) Article 35 (right not to suffer deduction of unauthorised or excessive subscriptions);
- (c) Article 38 (expulsion from union).

*Regulations and orders*

**Regulations and orders**

**149.**—(1) Subject to paragraph (2), all regulations and orders made by the Department under this Order shall be subject to negative resolution.

(2) Paragraph (1) does not apply to an order under Article 1(2), 91(3) or 121(2).

(3) Regulations and orders under this Order may contain such incidental, supplementary and transitional provisions as appear to the Department to be necessary or expedient.

*Amendments, transitional provisions and repeals*

**Amendments, transitional provisions and repeals**

**150.**—(1) The Coal Mines Regulation Act 1908<sup>(4)</sup> (which makes provision for limiting hours of work below ground) shall cease to have effect.

(2) The statutory provisions set out in Schedule 2 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(3) The transitional provisions in Schedule 3 shall have effect.

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

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(4) 1908 c. 57