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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART VI

#### PROTECTION FROM SUFFERING DETRIMENT ETC. IN EMPLOYMENT

##### CHAPTER I

##### RIGHTS NOT TO SUFFER DETRIMENT

#### Complaints to industrial tribunals

71.—(1) An employee may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article<sup>[F1]</sup> 67M,] 68,<sup>[F2]</sup> 69, 70<sup>[F3]</sup>, 70A<sup>[F4]</sup>, <sup>[F5]</sup>70C(1) or<sup>[F6]</sup> 70E]]].

<sup>[F7]</sup>(1ZA) A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 68A.]

<sup>[F8]</sup>(1A) A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 70B.]

<sup>[F9]</sup>(1AA) An agency worker may present a complaint to an industrial tribunal that the agency worker has been subjected to a detriment in contravention of Article 70C(4) by the temporary work agency or the hirer.]

<sup>[F10]</sup>(1B) A person may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 70D.]

(2) <sup>[F8]</sup>On a complaint under <sup>[F11]</sup>paragraph (1), (1ZA), (1A) or (1B)]] it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

<sup>[F12]</sup>(2A) On a complaint under paragraph (1AA) it is for the temporary work agency or (as the case may be) the hirer 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) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

<sup>[F13]</sup>(3A) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (3)(a).]

(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;

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and, in the absence of evidence establishing the contrary, an employer [<sup>F14</sup>, a temporary work agency or a hirer] 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.

[<sup>F2</sup>(5) In this Article and Article 72 any reference to the employer [<sup>F15</sup>includes—

(a) where] a person complains that he has been subjected to a detriment in contravention of Article 70A, the principal (within the meaning of Article 91A(3)).

[ in the case of proceedings against a worker or agent under Article 70B(1A), the worker [<sup>F16</sup>(b) or agent.]]

[<sup>F17</sup>(6) In—

(a) this Article, “agency worker”, and

(b) this Article and Article 72, “hirer” and “temporary work agency”,

have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011.]

- F1** 2004 NI 19  
**F2** 1998 NI 15  
**F3** 1999 NI 9  
**F4** 2002 NI 2  
**F5** Word in art. 71(1) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 18\(3\)\(a\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(o\)](#)  
**F6** 2003 NI 15  
**F7** SR 1998/386  
**F8** 1998 NI 17  
**F9** Art. 71(1AA) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 18\(3\)\(b\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(o\)](#)  
**F10** Art. 71(1B) inserted (1.9.2002 for certain purposes, otherwise prosp.) by [Tax Credits Act 2002 \(c. 21\), ss. 27, 61, Sch. 1 para. 2\(3\); S.I. 2002/1727, art. 2](#)  
**F11** Words in art. 71(2) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 18\(3\)\(c\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(o\)](#)  
**F12** Art. 71(2A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 18\(3\)\(d\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(o\)](#)  
**F13** Art. 71(3A) inserted (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), s. 29\(2\), Sch. 2 para. 16; S.R. 2020/1, art. 2\(n\)](#)  
**F14** Words in art. 71(4) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 18\(3\)\(e\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(o\)](#)  
**F15** Words in art. 71(5) substituted (1.10.2017) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 16\(2\)\(a\), 29\(2\); S.R. 2017/199, art. 2](#)  
**F16** Art. 71(5)(b) inserted (1.10.2017) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 16\(2\)\(b\), 29\(2\); S.R. 2017/199, art. 2](#)  
**F17** Art. 71(6) added (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 18\(3\)\(f\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(o\)](#)

#### Modifications etc. (not altering text)

- C1** Art. 71 applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\), regs. 1\(1\), 51, Sch. 5 para. 13\(3\) \(with reg. 50\)](#)  
**C2** Art. 71(2)-(4) applied (6.4.2006) by [Occupational and Personal Pension Schemes \(Consultation by Employers\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/48\), reg. 17, Sch. para. 8\(2\)](#)  
**C3** Art. 71(2)-(14) applied (18.8.2006) by virtue of [European Cooperative Society \(Involvement of Employees\) Regulations 2006 \(S.I. 2006/2059\), regs. 2, 34\(2\), Sch. 3 para. 22](#)

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- C4** Art. 71(2)-(4) applied (with modifications) (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 32(2)** (with reg. 39)
- C5** Art. 71(2)-(4) applied (with modifications) (30.6.2012) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 56, 118(1)** (with s. 73); S.R. 2012/266, art. 2(b), Sch. Pt. 2

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