Status: *Point in time view as at 01/10/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *The Employment Rights (Northern Ireland) Order 1996, PART XI is up to date with all changes known to be in force on or before 23 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XI

UNFAIR DISMISSAL

Modifications etc. (not altering text)

C1 Pt. 11 (arts. 126-169A) modified (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), 7, Sch. 1 paras. 4, **11** (with reg. 21(1), Sch. 1 para. 3)

C2 Pt. 11 (arts. 126-169A) modified (18.8.2006) by European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 2, 31, Sch. 3 paras. 10, **22**

C3 Pt. 11 (arts. 126-169A) modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 13(5)** (with reg. 50)

C4 Pt. 11 (arts. 126-169A) modified (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 46(1), Sch. 2 paras. 7, **20**

C5 Pt. 11 (arts. 126-169A) modified (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 29** (with reg. 39)

C6 Pt. 11 (arts. 126-169A) modified (5.12.2011) by Agency Workers Regulations (Northern Ireland) 2011 (S.R. 2011/350), **reg. 17**

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

The right

The right

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

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

Dismissal

Circumstances in which an employee is dismissed

127.—(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to paragraph (2) [F1]. . . , only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

[[F2](b) he is employed under a limited-term contract that terminates by virtue of the limiting event without being renewed, or]

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

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

(a) the employer gives notice to the employee to terminate his contract of employment, and

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

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

F1 1999 NI 9
F2 SR 2002/298

Modifications etc. (not altering text)
C7 Art. 127(1)(c) restricted (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), 10(3), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)

Art. 128 rep. by 1999 NI 9

Effective date of termination

129.—(1) Subject to the following provisions of this Article, in this Part "the effective date of termination"

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

[[F3](c) in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed, means the date on which the termination takes effect.**]**

(2) Where—

(a) the contract of employment is terminated by the employer, and

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

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

(3) In paragraph (2)(b) "the material date" means—

(a) the date when notice of termination was given by the employer, or

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

(4) Where—

(a) the contract of employment is terminated by the employee,

(b) the material date does not fall during a period of notice given by the employer to terminate that contract, and

(c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by Article 118 to expire on a date later than the effective date of termination (as defined by paragraph (1)),

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

(5) In paragraph (4) "the material date" means—

(a) the date when notice of termination was given by the employee, or

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

Para. (6) rep. by 1999 NI 9

F3 SR 2002/298

Fairness

General

130.—(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this paragraph if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

[[F4](ba) is retirement of the employee,**]**

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under a statutory provision.

[[F5](2A) Paragraphs (1) and (2) are subject to Articles 130ZA to 130ZF.**]**

(3) In paragraph (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

[[F6](3A) In any case where the employer has fulfilled the requirements of paragraph (1) by showing that the reason (or the principal reason) for the dismissal is retirement of the employee, the question whether the dismissal is fair or unfair shall be determined in accordance with Article 130ZG.**]**

(4) **[**[F7]In any other case where**]** the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

Para. (5) rep. by 1999 NI 9

(6) **[**[F8]Paragraph (4) is**]** subject to Articles**[**[F9] 130A**]** to 139**[**[F10], 144 and 144A**]**.

F4 Art. 130(2)(ba) inserted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 3(3)(a)** (with reg. 50)
F5 Art. 130(2A) inserted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 3(3)(b)** (with reg. 50)
F6 Art. 130(3A) inserted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 3(3)(c)** (with reg. 50)
F7 Words in art. 130(4) substituted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 3(3)(d)** (with reg. 50)
F8 1999 NI 9
F9 2003 NI 15
F10 2004 NI 19

[[F11]*Retirement*

F11 Arts. 130ZA-130ZH and crossheadings preceding and following said arts. inserted (1.10.2006) by The Employment Equality (Age) Regulations (Northern Ireland) (S.R. 2006/261), regs. 1(1), 53(1), {Sch. 7 para. 3(4)}

No normal retirement age: dismissal before 65

130ZA.—(1) This Article applies to the dismissal of an employee if—

(a) the employee has no normal retirement age, and

(b) the operative date of termination falls before the date when the employee reaches the age of 65.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

Modifications etc. (not altering text)
C8 Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)
C9 Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))
C10 Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

No normal retirement age: dismissal at or after 65

130ZB.—(1) This Article applies to the dismissal of an employee if—

(a) the employee has no normal retirement age, and

(b) the operative date of termination falls on or after the date when the employee reaches the age of 65.

(2) In a case where—

(a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

(b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

(a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, but

(b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

(a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

(b) there is an intended date of retirement in relation to the dismissal, but

(c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, particular regard shall be had to the matters in Article 130ZF when determining the reason (or principal reason) for dismissal.

Modifications etc. (not altering text)

C11 Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

C12 Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))

C13 Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Normal retirement age: dismissal before retirement age

130ZC.—(1) This Article applies to the dismissal of an employee if—

(a) the employee has a normal retirement age, and

(b) the operative date of termination falls before the date when the employee reaches the normal retirement age.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

Modifications etc. (not altering text)

C14 Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

C15 Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))

C16 Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Normal retirement age 65 or higher: dismissal at or after retirement age

130ZD.—(1) This Article applies to the dismissal of an employee if—

(a) the employee has a normal retirement age,

(b) the normal retirement age is 65 or higher, and

(c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

(2) In a case where—

(a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

(b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

(a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, but

(b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

(a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

(b) there is an intended date of retirement in relation to the dismissal, but

(c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, particular regard shall be had to the matters in Article 130ZF when determining the reason (or principal reason) for dismissal.

Modifications etc. (not altering text)

C17 Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

C18 Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))

C19 Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Normal retirement age below 65: dismissal at or after retirement age

130ZE.—(1) This Article applies to the dismissal of an employee if—

(a) the employee has a normal retirement age,

(b) the normal retirement age is below 65, and

(c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

(2) If it is unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(3) Paragraphs (4) to (7) apply if it is not unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age.

(4) In a case where—

(a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

(b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.

(5) In a case where—

(a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, but

(b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(6) In a case where—

(a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

(b) there is an intended date of retirement in relation to the dismissal, but

(c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(7) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, particular regard shall be had to the matters in Article 130ZF when determining the reason (or principal reason) for dismissal.

Modifications etc. (not altering text)

C20 Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

C21 Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))

C22 Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Reason for dismissal: particular matters

130ZF.—(1) These are the matters to which particular regard is to be had in accordance with Article 130ZB(5), 130ZD(5) or 130ZE(7)—

(a) whether or not the employer has notified the employee in accordance with paragraph 4 of Schedule 5 to the 2006 Regulations,

(b) if the employer has notified the employee in accordance with that paragraph, how long before the notified retirement date the notification was given,

(c) whether or not the employer has followed, or sought to follow, the procedures in paragraph 7 of Schedule 5 to the 2006 Regulations.

(2) In paragraph (1)(b), "notified retirement date" means the date notified to the employee in accordance with paragraph 4 of Schedule 5 to the 2006 Regulations as the date on which the employer intends to retire the employee.

Modifications etc. (not altering text)

C23 Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

C24 Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))

C25 Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Retirement dismissals: fairness

130ZG.—(1) This Article applies if the reason (or principal reason) for a dismissal is retirement of the employee.

(2) The employee shall be regarded as unfairly dismissed if, and only if, there has been a failure on the part of the employer to comply with an obligation imposed on him by any of the following provisions of Schedule 5 to the 2006 Regulations—

(a) paragraph 4 (notification of retirement, if not already given under paragraph 2),

(b) paragraphs 6 and 7 (duty to consider employee's request not to be retired),

(c) paragraph 8 (duty to consider appeal against decision to refuse request not to be retired).

Modifications etc. (not altering text)

C26 Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

C27 Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))

C28 Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Interpretation

130ZH. In Articles 130ZA to 130ZG—

"the 2006 Regulations" means the Employment Equality (Age) Regulations (Northern Ireland) 2006;

"intended date of retirement" means the date which, by virtue of paragraph 1(2) of Schedule 5 to the 2006 Regulations, is the intended date of retirement in relation to a particular dismissal;

"normal retirement age", in relation to an employee, means the age at which employees in the employer's undertaking who hold, or have held, the same kind of position as the employee are normally required to retire;

"operative date of termination" means—

(a) where the employer terminates the employee's contract of employment by notice, the date on which the notice expires, or

(b) where the employer terminates the contract of employment without notice, the date on which the termination takes effect.

Modifications etc. (not altering text)

C29 Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

C30 Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))

C31 Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

*Other Dismissals***]**

[[F12X1]Procedural fairness

130A.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) one of the procedures set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003 (dismissal and disciplinary procedures) applies in relation to the dismissal,

(b) the procedure has not been completed, and

(c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.

(2) Subject to paragraph (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of Article 130(4)(a) as by itself making the employer's action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.

(3) For the purposes of this Article, any question as to the application of a procedure set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003, completion of such a procedure or failure to comply with the requirements of such a procedure shall be determined by reference to regulations under Article 17 of that Order.**]**

Editorial Information

X1 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure

of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F12 2003 NI 15

[F13X2 Jury service

130B.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) has been summoned under the Juries (Northern Ireland) Order [F14 1996] or the Coroners Act (Northern Ireland) 1959 (c.15) to attend for service as a juror, or

(b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) Paragraph (1) does not apply in relation to an employee who is dismissed if the employer shows—

(a) that the circumstances were such that the employee's absence in pursuance of being so summoned was likely to cause substantial injury to the employer's undertaking,

(b) that the employer brought those circumstances to the attention of the employee,

(c) that the employee refused or failed to apply to be excused from attending in pursuance of being so summoned, and

(d) that the refusal or failure was not reasonable]

Editorial Information

X2 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F13 2004 NI 19

F14 Word in art. 130B(1)(a) substituted (3.8.2010) by Employment Act (Northern Ireland) 2010 (c. 12), ss. 7(1), 8(2), **Sch. 1 para. 6(2)**

[F15X3 Leave for family reasons

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

(a) the reason or principal reason for the dismissal is of a prescribed kind, or

(b) the dismissal takes place in prescribed circumstances.

(2) In this Article "prescribed" means prescribed by regulations made by the Department.

(3) A reason or set of circumstances prescribed under this Article must relate to—

(a) pregnancy, childbirth or maternity,

(b) ordinary, compulsory or additional maternity leave,

[F16 (ba) ordinary or additional adoption leave,]

(c) parental leave,

[F17 (ca) ordinary or additional paternity leave, or]

(d) time off under Article 85A;

and it may also relate to redundancy or other factors.

(4) A reason or set of circumstances prescribed under paragraph (1) satisfies paragraph (3)(c) if it relates to action which an employee—

(a) takes,

(b) agrees to take, or

(c) refuses to take,

under or in respect of a collective or workforce agreement which deals with parental leave.

(5) Regulations under this Article may apply any statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this Article**]**

Editorial Information

X3 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F15 1999 NI 9

F16 2002 NI 2

F17 Art. 131(3)(ca) substituted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), 13(1), **Sch. 1 para. 40**; S.R. 2010/295, **art. 2(b)(c)**

[X4]Health and safety cases

132.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—

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

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

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

[[F18](ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996 or in an election of representives of employees safety within the meaning of those Regulations (whether as a candidate or otherwise),**]**

(c) being an employee at a place where—

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

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

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

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

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

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

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

Editorial Information

X4 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F18 SR 1996/511

[[F19X5]Working time cases

132A.—[

[F20](1)] An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations (Northern Ireland) 1998,

(b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or

(d) being—

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or

(ii) a candidate in an election in which any person elected will, on being elected, be such a representative,

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

[

[F20](2) A reference in this Article to the Working Time Regulations (Northern Ireland) 1998 includes a reference to

[F21](a)[the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.]

[F21](b)[the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 [F22]; and

(c) the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008.]]]]

Editorial Information

X5 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F19 SR 1998/386

F20 SI 2003/3049

F21 SI 2004/1713

F22 Art. 132A(2)(c) and preceding word inserted (1.10.2008) by Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (S.R. 2008/315), reg. 19, **Sch. 3 para. 2(3)**

[X6]Trustees of occupational pension schemes

133.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

[[F23](1A) This Article applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).]

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

Editorial Information

X6 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F23 1999 NI 11

[X7]Employee representatives

134.—[[F24](1)] An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee, being—

(a) an employee representative for the purposes of Part XIII of this Order or**[**[F25]regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006**][**[F26]or regulations 9, 13 and 15 of the Service Provision Change (Protection of Employment) Regulations 2006**]**, or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

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

[[F24](2) An employee who is dismissed shall be reguarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee took part in an election of employee representatives for the purposes of Part XIII of this Order or **[**[F27]regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006**][**[F28]or regulations 9, 13 and 15 of the Service Provision Change (Protection of Employment) Regulations 2006**].]**

Editorial Information

X7 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F24 SR 1999/432

F25 Words in art. 134(1)(a) substituted (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), reg. 20(3), **Sch. 2 para. 11(c)** (with reg. 21(1), Sch. 1 para. 3)

F26 Words in art. 134(1)(a) inserted (6.4.2006) by Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (S.R. 2006/177), reg. 20(1), **Sch. 1 para. 2(c)**

F27 Words in art. 134(2) substituted (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), reg. 20(3), **Sch. 2 para. 11(c)** (with reg. 21(1), Sch. 1 para. 3)

F28 Words in art. 134(2) inserted (6.4.2006) by Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (S.R. 2006/177), reg. 20(1), **Sch. 1 para. 2(c)**

[[F29X8]**Protected disclosure**

134A. An employee who is dismissed shall be reguarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.**]**

Editorial Information

X8 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F29 1998 NI 17

[X9]Assertion of statutory right

135.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of paragraph (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed;

but, for that paragraph to apply, the claim to the right and that it has been infringed must be made in good faith.

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

(4) The following are relevant statutory rights for the purposes of this Article—

(a) any right conferred by this Order**[**[F30] or Schedule 2 to the Shops (Sunday Trading & c.) (Northern Ireland) Order 1997**][**[F31] or Schedule 8A to the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985**]** for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal,

(b) the right conferred by Article 118 of this Order,[F32]. . .

(c) the rights conferred by Articles 35 and 60 of the Trade Union and Labour Relations Order (deductions from pay)[F33]. . .

[[F34](d) the rights conferred by the Working Time Regulations (Northern Ireland) 1998, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003 **[**[F35], the Fishing Vessels (Working Time: Sea-fisherman) Regulations 2004 or the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008**].][**[F36], and

(e) the rights conferred by the Transfer of Undertakings (Protection of Employment) Regulations 2006.**]**

[[F37](5) In this Article any reference to an employer includes, where the right in question is conferred by Article 91A, the principal (within the meaning of Article 91A(3)).**]**

Editorial Information

X9 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F30 1997 NI 20

F31 1985 NI 11 as inserted by 2004 NI 1

F32 SR 1998/386

F33 Word in art. 135(4)(c) omitted (6.4.2006) by virtue of Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), **19(a)**, Sch. 1 para. 11 (with reg. 21(1), Sch. 1 para. 3)

F34 SI 2004/1713

F35 Words in art. 135(4)(d) substituted (1.10.2008) by Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (S.R. 2008/315), reg. 19, **Sch. 3 para. 2(4)**

F36 Art. 135(4)(e) and preceding words inserted (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), **19(b)**, Sch. 1 para. 11 (with reg. 21(1), Sch. 1 para. 3)

F37 1998 NI 15

[F38X10The national minimum wage

135A.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies; or

(b) the employer was prosecuted for an offence under section 31 of the National Minimum Wage Act 1998 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies; or

(c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.

(2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed; but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

(3) The following are the rights to which this Article applies—

(a) any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an industrial tribunal, and

(b) any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration).**]**

Editorial Information

X10 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F38 1998 c. 39

[F39X11F40Tax credit

135B.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 6(2)(a) or (c) of the Tax Credits Act 1999;

(b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under section 9 of that Act, as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right; or

(c) the employee is entitled, or will or may be entitled, to working families' tax credit or disabled person's tax credit.

(2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed;

but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.**]**

Editorial Information

X11 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F39 1999 c. 10

F40 prosp. in pt. subst. by 2002 c. 21 for the purpose of rights conferred on employees by virtue of regulations under s. 25

[[F41X12]Flexible working

135C. An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) made (or proposed to make) an application under Article 112F,

(b) exercised (or proposed to exercise) a right conferred on him under Article 112G,

(c) brought proceedings against the employer under Article 112H, or

(d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.**]**

Editorial Information

X12 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F41 2002 NI 2

VALID FROM 30/06/2012

[[F42]Pension enrolment

135D.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the employee a requirement to which this Article applies;

(b) the employer was prosecuted for an offence under section 45 of the Pensions (No. 2) Act (Northern Ireland) 2008 as a result of action taken for the purposes of enforcing in favour of the employee a requirement to which this Article applies; or

(c) any provision of Chapter 1 of that Part of that Act applies to the employee, or will or might apply.

(2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—

(a) whether or not the requirement applies in favour of the employee, or

(b) whether or not the requirement has been contravened,

but, for that paragraph to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.

(3) This Article applies to any requirement imposed on the employer by or under any provision of Chapter 1 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008.

(4) In this Article references to enforcing a requirement include references to securing its benefit in any way.**]**

F42 Art. 135D inserted (30.6.2012) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 57(2)**, 118(1) (with s. 73); S.R. 2012/266, art. 2(b), Sch. Pt. 2

[X13]Trade union membership or activities

136.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for his dismissal is that the employee—

(a) was, or proposed to become, a member of an independent trade union,[F43]. . .

(b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time,[F43]. . .

[[F43](ba) had made use, or proposed to make use, of trade union services at an appropriate time,

(bb) had failed to accept an offer made in contravention of Article 77A or 77B, or**]**

(c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

(2) In paragraph**[**[F43] (1)**]** "an appropriate time" means—

(a) a time outside the employee's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union**[**[F43] or (as the case may be) make use of trade union services**]**;

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

[[F43](2A) In this Article—

(a) "trade union services" means services made available to the employee by an independent trade union by virtue of his membership of the union, and

(b) references to an employee's "making use" of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(2B) Where the reason or one of the reasons for the dismissal was that an independent trade union (with or without the employee's consent) raised a matter on behalf of the employee as one of its members, the reason shall be treated as falling within paragraph (1)(ba).**]**

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

(a) the employee's refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments, or

(b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in sub-paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

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

(4) References in this Article to being or becoming a member of a trade union include references to being or becoming a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union[F43]. . . .

[[F43](5) References in this Article—

(a) to taking part in the activities of a trade union, and

(b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (4).**]**

Editorial Information

X13 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F43 2004 NI 19

[X14]Redundancy

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

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

[[F44F45](c) it is shown that any of paragraphs (2A) to **[**[F46](7K)**]** apply.**]**

Para. (2) rep. by 1999 NI 9

[[F47](2A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 130B (unless the case is one to which paragraph (2) of that Article applies).**]**

(3) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article).

[[F48](3A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 132A.**]**

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

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

[[F49](5A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 134A.**]**

(6) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article).

[[F50](6A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135A (read with paragraph (2) of that Article).**]**

[[F51F52](6B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135B (read with paragraph (2) of that Article).**]**

[[F47](6C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 135C.**]**

(7) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 136(1) (read with paragraph (3) of that Article).

[[F53](7A) This paragraph applies if—

(a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the reason mentioned in Article 144A (participation in official industrial action), and

(b) paragraph (3), (4) or (5) of that Article applies to the dismissal.**]**

[[F54](7B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation).**]**

[[F55](7C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 (unless the case is one to which paragraph (4) of that regulation applies).**]**

[[F56](7D) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 (unless the case is one to which paragraph (4) of that regulation applies).**]**

[[F57](7E) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (read with paragraphs (4) and (7) of that regulation).**]**

[[F58](7F) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 30

of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (read with paragraphs (4) and (7) of that regulation).**]**

[[F59](7G) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (read with paragraph 5(6) of that Schedule).**]**

[[F60]**[**
[F61](7H)**]** This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation)**]**

[[F62](7H) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in regulation 46 or 47 of the Companies (Cross-Border Mergers) Regulations 2007.**]**

[[F63](7I) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that he—

(a) exercised or sought to exercise his right to be accompanied in accordance with paragraph 9 of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006, or

(b) accompanied or sought to accompany an employee pursuant to a request under that paragraph.**]**

[[F64](7K) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 29 of the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I.2009/2402) (read with paragraphs (4) and (7) of that regulation).**]**

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

Editorial Information

X14 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F44 Art. 137(1)(c) substituted (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 6(2)(a)**

F45 By European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **regs. 2(2)**, 32(1)(a) (in their application in relation to Northern Ireland subject to the modifications in {Sch. 3 para. 11}) it is provided (18.8.2006) that in art. 137(1)(c) for "7F" there be substituted "7G"

F46 Words in art. 137(1)(c) substituted (1.10.2009) by virtue of European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 30(1)** (with reg. 39) (This amendment supercedes the prosp. amendment by the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 57(3))

F47 2004 NI 19

F48 SR 1998/386

F49 1998 NI 17

F50 1998 c. 39

F51 1999 c. 10

F52 Art. 137(6B) insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 27, 61, **Sch. 1 para. 4(3)**; S.I. 2002/1727, **art. 2**

F53 1999 NI 9
F54 SI 1999/3323
F55 SR 2000/219
F56 SR 2002/298
F57 SR 2004/417
F58 SR 2005/47
F59 Art. 137(7G) inserted (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 6(2)(b)**
F60 Art. 137(7G) inserted (18.8.2006) by virtue of European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **regs. 2(2)**, 32(1)(b) (in their application in relation to Northern Ireland subject to the modifications in {Sch. 3 para. 11})
F61 Art. 137(7G) renumbered (6.4.2007) as art. 137(7H) by Employment Equality (Age) (Consequential Amendments) Regulations (Northern Ireland) 2007 (S.R. 2007/225), **reg. 3(2)(a)**
F62 Art. 137(7H) inserted (15.12.2007) by virtue of Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 48(1)(b), **Sch. 2 para. 8**
F63 Art. 137(7I) inserted (6.4.2007) by Employment Equality (Age) (Consequential Amendments) Regulations (Northern Ireland) 2007 (S.R. 2007/225), **reg. 3(2)(b)**
F64 Art. 137(7K) inserted (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 30(2)** (with reg. 39)

[X15]Replacements

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

(2) This Article applies to an employee where—

(a) on engaging him the employer informs him in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth,**[**[F65] or on adoption leave**][**[F66] or leave under Article 112AA or 112BB (additional paternity leave),**]** and

(b) the employer dismisses him in order to make it possible to give work to the other employee.

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

(a) on engaging him the employer informs him in writing that his employment will be terminated on the end of a suspension of another employee from work on medical grounds or maternity grounds (within the meaning of Part VIII), and

(b) the employer dismisses him in order to make it possible to allow the resumption of work by the other employee.

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

Editorial Information

X15 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading
F65 2002 NI 2
F66 Words in art. 138(2)(a) inserted (1.10.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), 13(1), **Sch. 1 para. 41**; S.R. 2010/295, **art. 3(a)(d)**

[X16]Pressure on employer to dismiss unfairly

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

(a) as to the reason, or principal reason, for which an employee was dismissed,

(b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of Article 130(1)(b), or

(c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing him.

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

Editorial Information

X16 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

Exclusion of right

Qualifying period of employment

140.—(1) Article 126 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than**[**[F67] one year**]** ending with the effective date of termination.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in Article 96(2), paragraph (1) has effect in relation to that dismissal as if for the words**[**[F67] one year**]** there were substituted the words “one month”.

(3) Paragraph (1) does not apply if—

Sub#para. (a) rep. by 1999 NI 9

[[F68](aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies,**]**

[[F68](b) paragraph (1) of Article 131 (read with any regulations made under that Article) applies,**]**

(c) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,

[[F69](cc) Article 132A applies,**]**

(d) Article 133 applies,

(e) Article 134 applies,

[[F70](ee) Article 134A applies,**]**

(f) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies,

[[F71](ff) paragraph (1) of Article 135A (read with paragraph (2) of that Article) applies,**]**

[[F72F73](fg) paragraph (1) of Article 135B (read with paragraph (2) of that Article) applies,**]**

[[F74](fh) Article 135C applies;**]**

(g) Article 136 applies, or

(h) Article 137 applies[F75]. . .

[[F76](j) Article 144A applies[F77]. . .]

[[F78](k) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulations) applies[F79]. . .]

[[F77](l) paragraph (1) of regulation 7 of the Part#time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 applies.[F80]. . .]

[[F79](m) paragraph (1) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 applies.[F81]. . .]

[[F80](n) paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 applies.[F82]. . .]

[[F81F83](o) paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (read with paragraphs (4) and (7) of that regulation) applies.][[F84F85]. . .

(p) paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 applies][[F86], or

(p) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (read with paragraph 5(6) of that Schedule) applies.][[F87] or

(q) head (a) or (b) of paragraph 13(5) of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 applies.][[F88F89]. . .

(q) regulation 46 or 47 of the Companies (Cross-Border Mergers) Regulations 2007 applies][[F90], or

(r) paragraph (1)(a) or (b) of regulation 29 of the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I.2009/2402) applies,]

F67 SR 1999/277
F68 2004 NI 19
F69 SR 1998/386
F70 1998 NI 17
F71 1998 c. 39
F72 1999 c. 10
F73 Art. 140(3)(fg) insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 4(4)**; S.I. 2002/1727, **art. 2**
F74 2003 NI 15
F75 SI 1999/3323
F76 1999 NI 9
F77 SR 2000/219
F78 SI 1999/2232
F79 SR 2002/298
F80 SR 2004/417
F81 SR 2005/47
F82 Word in art. 140(3)(n) omitted (6.4.2006) by virtue of Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 6(3)(a)**
F83 By Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 48(2)(a), **Sch. 2 para. 8** it is provided (15.12.2007) that in art. 140(3)(o) omit the word "or"

F84 Art. 140(3)(p) and preceding word inserted (18.8.2006) by virtue of European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **regs. 2(2)**, 32(2)(b) (in their application in relation to Northern Ireland subject to the modifications in {Sch. 3 para. 11})

F85 Word in art. 140(3)(o) repealed (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53, Sch. 7 para. 3(5)(a), **Sch. 8(1)** (with reg. 50)

F86 Art. 140(3)(p) and preceding words inserted (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 6(3)(b)**

F87 Art. 140(3)(q) and preceding word inserted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 3(5)(b)** (with reg. 50)

F88 Art. 140(3)(q) and preceding word inserted (15.12.2007) by virtue of Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 48(2)(b), **Sch. 2 para. 8**

F89 Word in art. 140(3) omitted (1.10.2009) by virtue of European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 30(3)** (with reg. 39)

F90 Art. 140(3)(r) and preceding words inserted (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 30(3)** (with reg. 39)

Upper age limit

141. [F91] . . . . . .

F91 Art. 141 repealed (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53, Sch. 7 para. 3(6), **Sch. 8(1)** (with reg. 50)

Dismissal procedures agreements

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

(a) the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under Article 126, and

(b) accordingly, Article 126 does not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.

[[F92](2) But if the agreement includes provision that it does not apply to dismissals of particular descrtptions, pargraph (1) does not apply in relation to a dismissal of any such description.**]**

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

(a) every trade union which is a party to the agreement is an independent trade union,

(b) the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed,

(c) those procedures are available without discrimination to all employees falling within any description to which the agreement applies,

(d) the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part,

[[F92](e) the agreement includes provision either for arbitration in every case or for—

(i) arbitration where (by reason of equality of votes or for any other reason) a decision under the agreement cannot otherwise be reached, and

(ii) a right to submit to arbitration any question of law arising out of such a decision, and**]**

(f) the provisions of the agreement are such that it can be determined with reasonable certainty whether or not a particular employee is one to whom the agreement applies.

[F93](4) If at any time when an order under paragraph (3) is in force in relation to a dismissal procedures agreement the Department is satisfied, whether on an application made to it by any of the parties to the agreement or otherwise, either—

(a) that it is the desire of all the parties to the agreement that the order should be revoked, or

(b) that the agreement no longer satisfies all the conditions specified in paragraph (3),

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

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

(a) that an employee—

(i) shall not be excluded from his right under Article 126 where the effective date of termination falls within a transitional period which ends with the date on which the order takes effect and which is specified in the order, and

(ii) shall have an extended time for presenting a complaint under Article 145 in respect of a dismissal where the effective date of termination falls within that period, and

(b) that, where the effective date of termination falls within such a transitional period, an industrial tribunal shall, in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, have regard to such considerations as are specified in the order (in addition to those specified in this Part and Article 12(4) and (5) of the Industrial Tribunals (Northern Ireland) Order 1996).

[[F92](6) Where an award is made under a designed dismissal procedures agreement it may be enforced, by leave of a county court, in the same manner as a judgement of the court to the same effect and, where leave is given, judgement may be entered in terms of the award.**]**

F92 1998 NI 8
F93 prosp. insertion by 2003 NI 15

Dismissal of those taking part in unofficial industrial action

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

(2) Paragraph (1) does not apply if—

[[F94](aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;**]**

[[F95](a) Article 131 applies;**]**

(b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,

[[F96](bb) Article 132A(d) applies,**]**

(c) Article 134 applies,

[[F97](cc) Article 134A applies;**]**

[[F95](ccc) Article 135 applies in relation to time off under Article 85A;**]**

Sub#para. (d) rep. by 1999 NI 9

[[F94](d) Article 135C applies;**]**

(e) Article 137(1) and (3) applies, or

(f) Article 137(1) and (5) applies.

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

(a) he is a member of a trade union and the action is authorised or endorsed by that union, or

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

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

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

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

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

(a) where the employee's contract of employment is terminated by notice, when the notice is given,

(b) where the employee's contract of employment is terminated without notice, when the termination takes effect, and

(c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

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

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

F94 2004 NI 19
F95 1999 NI 9
F96 SR 1998/386
F97 1998 NI 17

Dismissals in connection with other industrial action

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

(a) the employer was conducting or instituting a lock-out, or

(b) the complainant was taking part in a strike or other industrial action.

(2) This Article does not apply if—

[[F98](aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;**]**

[[F99](a) Article 131 applies;**]**

(b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,

[[F100](bb) Article 132A(d) applies,**]**

(c) Article 134 applies,

[[F99](cc) Article 135 applies in relation to time off under Article 85A;**]**

[[F98](d) Article 135C applies;**]**

(e) Article 137(1) and (3) applies, or

(f) Article 137(1) and (5) applies.

[[F99](2A) This Article does not apply in relation to an employee who is regarded as unfairly dismissed by virtue of Article 144A.**]**

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

(a) that one or more relevant employees of the same employer have not been dismissed, or

(b) that a relevant employee has before the expiry of the period of three months beginning with the date of his dismissal been offered re-engagement and that the complainant has not been offered re-engagement.

(4) For this purpose "relevant employees" means—

(a) in relation to a lock-out, employees who were directly interested in the dispute in contemplation or furtherance of which the lock-out occurred, and

(b) in relation to a strike or other industrial action, those employees at the establishment of the employer at or from which the complainant works who at the date of his dismissal were taking part in the action.

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

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

(7) In this Article "date of dismissal" means—

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

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

(8) Article 145(2) does not apply in relation to a complaint to which this Article**[**[F99] or Article 144A**]** applies, but an industrial tribunal shall not consider such a complaint unless it is presented—

(a) before the end of the period of six months beginning with the date of the complainant's dismissal; or

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

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

F98 2004 NI 19
F99 1999 NI 9

F100 SR 1998/386

[F101Participation in official industrial action

144A.—(1) For the purposes of this Article an employee takes protected industrial action if he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of Article 97 of the Trade Union and Labour Relations Order is not actionable in tort.

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

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action, and

(b) paragraph (3), (4) or (5) applies to the dismissal.

(3) This paragraph applies to a dismissal if**[**F102 the date of the dismissal is**][**F102 within the protected period.**]**

(4) This paragraph applies to a dismissal if—

(a) **[**F102the date of the dismissal is**]** after the end of that period, and

(b) the employee had stopped taking protected industrial action before the end of that period.

(5) This paragraph applies to a dismissal if—

(a) **[**F102the date of the dismissal is**]** after the end of that period,

(b) the employee had not stopped taking protected industrial action before the end of that period, and

(c) the employer had not taken such procedural steps as would have been reasonable for the purposes of resolving the dispute to which the protected industrial action relates.

(6) In determining whether an employer has taken those steps regard shall be had, in particular, to—

(a) whether the employer or a union had complied with procedures established by any applicable collective or other agreement;

(b) whether the employer or a union offered or agreed to commence or resume negotiations after the start of the protected industrial action;

(c) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that conciliation services be used;

(d) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that mediation services be used in relation to procedures to be adopted for the purposes of resolving the dispute.

F102**[**(e) where there was agreement to use either of the services mentioned in sub-paragraphs (c) and (d), the matters specified in Article 144B.**]**

(7) In determining whether an employer has taken those steps no regard shall be had to the merits of the dispute.

F102**[**(7A) For the purposes of this Article "the protected period", in relation to the dismissal of an employee, is the sum of the basic period and any extension period in relation to that employee.

(7B) The basic period is 12 weeks beginning with the first day of protected industrial action.

(7C) An extension period in relation to an employee is a period equal to the number of days falling on or after the first day of protected industrial action (but before the protected period ends) during the whole or any part of which the employee is locked out by his employer.

(7D) In paragraphs (7B) and (7C), the "first day of protected industrial action" means the day on which the employee starts to take protected industrial action (even if on that day he is locked out by his employer).**]**

(8) For the purposes of this Article no account shall be taken of the repudiation of any act by a trade union as mentioned in Article 21A of the Industrial Relations (Northern Ireland) Order 1992 in relation to anything which occurs before the end of the next working day (within the meaning of Article 143) after the day on which the repudiation takes place.

(9) In relation to a complaint under Article 145 that a dismissal was unfair by virtue of this Article—

(a) no order shall be made under Article 147 (reinstatement or re-engagement) until after the conclusion of protected industrial action by any employee in relation to the relevant dispute,

(b) regulations under Article 9 of the Industrial Tribunals (Northern Ireland) Order 1996 may make provision about the adjournment and renewal of applications (including provision requiring adjournment in specified circumstances), and

(c) regulations under Article 11 of that Order may require a pre-hearing review to be carried out in specified circumstances.

[
[F103](10) In this Article "date of dismissal" has the meaning given by Article 144(7).**]]**

F101 1999 NI 9
F102 2004 NI 19
F103 2004 NI 19

[[F104]Conciliation and mediation: supplementary provisions

144B.—(1) The matters referred to in paragraph (6)(e) of Article 144A are those specified in paragraphs (2) to (5); and references in this Article to "the service provider" are to any person who provided a service mentioned in paragraph (6)(c) or (d) of that Article.

(2) The first matter is: whether, at meetings arranged by the service provider, the employer or, as the case may be, a union was represented by an appropriate person.

(3) The second matter is: whether the employer or a union, so far as requested to do so, co-operated in the making of arrangements for meetings to be held with the service provider.

(4) The third matter is: whether the employer or a union fulfilled any commitment given by it during the provision of the service to take particular action.

(5) The fourth matter is: whether, at meetings arranged by the service provider between the parties making use of the service, the representatives of the employer or a union answered any reasonable question put to them concerning the matter subject to conciliation or mediation.

(6) For the purposes of paragraph (2) an "appropriate person" is—

(a) in relation to the employer—

(i) a person with the authority to settle the matter subject to conciliation or mediation on behalf of the employer, or

(ii) a person authorised by a person of that type to make recommendations to him with regard to the settlement of that matter, and

(b) in relation to a union, a person who is responsible for handling on the union's behalf the matter subject to conciliation or mediation.

(7) For the purposes of paragraph (4) regard may be had to any timetable which was agreed for the taking of the action in question or, if no timetable was agreed, to how long it was before the action was taken.

(8) In any proceedings in which regard must be had to the matters referred to in Article 144A(6)(e)—

(a) notes taken by or on behalf of the service provider shall not be admissible in evidence;

(b) the service provider must refuse to give evidence as to anything communicated to him in connection with the performance of his functions as a conciliator or mediator if, in his opinion, to give the evidence would involve his making a damaging disclosure; and

(c) the service provider may refuse to give evidence as to whether, for the purposes of paragraph (5), a particular question was or was not a reasonable one.

(9) For the purposes of paragraph (8)(b) a "damaging disclosure" is—

(a) a disclosure of information which is commercially sensitive, or

(b) a disclosure of information that has not previously been disclosed which relates to a position taken by a party using the conciliation or mediation service on the settlement of the matter subject to conciliation or mediation,

to which the person who communicated the information to the service provider has not consented.**]**

F104 2004 NI 19

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

Introductory

Complaints to industrial tribunal

145.—(1) A complaint may be presented to an industrial tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to paragraph (3), an industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, 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.

(3) Where a dismissal is with notice, an industrial tribunal shall consider a complaint under this Article if it is presented after the notice is given but before the effective date of termination.

(4) In relation to a complaint which is presented as mentioned in paragraph (3), the provisions of this Order, so far as they relate to unfair dismissal, have effect as if—

(a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,

(b) references to reinstatement included references to the withdrawal of the notice by the employer,

(c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and

(d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

The remedies: orders and compensation

146.—(1) This Article applies where, on a complaint under Article 145, an industrial tribunal finds that the grounds of the complaint are well-founded.

(2) The tribunal shall—

(a) explain to the complainant what orders may be made under Article 147 and in what circumstances they may be made, and

(b) ask him whether he wishes the tribunal to make such an order.

(3) If the complainant expresses such a wish, the tribunal may make an order under Article 147.

(4) If no order is made under Article 147, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with Articles 152 to**[**[F105] 161**]**)[F106]. . . to be paid by the employer to the employee.

[[F107](5) Where—

(a) an employee is regarded as unfairly dismissed by virtue of Article **[**[F108]130ZG or**]** 130A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason), and

(b) an order is made in respect of the employee under Article 147,

the industrial tribunal shall, subject to paragraph (6), also make an award of four weeks' pay to be paid by the employer to the employee.

(6) An industrial tribunal shall not be required to make an award under paragraph (5) if it considers that such an award would result in injustice to the employer.**]**

F105 2003 NI 15
F106 1999 NI 9
F107 2003 NI 15
F108 Words in art. 146(5)(a) inserted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 3(7)** (with reg. 50)

Orders for reinstatement or re-engagement

The orders

147. An order under this Article may be—

(a) an order for reinstatement (in accordance with Article 148),

(b) an order for re-engagement (in accordance with Article 149),

as the tribunal may decide.

Order for reinstatement

148.—(1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

(2) an order for reinstatement the tribunal shall specify—

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,

(b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(c) the date by which the order must be complied with.

(3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(4) In calculating for the purposes of paragraph (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.
Para. (5) rep. by 1999 NI 9

Order for re-engagement

149.—(1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.

(2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—

(a) the identity of the employer,

(b) the nature of the employment,

(c) the remuneration for the employment,

(d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,

(e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(f) the date by which the order must be complied with.

(3) In calculating for the purposes of paragraph (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.
Para. (4) rep. by 1999 NI 9

Choice of order and its terms

150.—(1) In exercising its discretion under Article 147 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—

(a) whether the complainant wishes to be reinstated,

(b) whether it is practicable for the employer to comply with an order for reinstatement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.

(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.

(3) In so doing the tribunal shall take into account—

(a) any wish expressed by the complainant as to the nature of the order to be made,

(b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under paragraph (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of paragraph (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

(6) Paragraph (5) does not apply where the employer shows—

(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or

(b) that—

(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and

(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

Enforcement of order and compensation

151 [F109]**.**—(1) An industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, if—

(a) an order under Article 147 is made and the complainant is reinstated or re-engaged, but

(b) the terms of the order are not fully complied with.

(2) Subject to Article 158[F110]. . . , the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

[[F111](2A) There shall be deducted from any award under paragraph (1) the amount of any award made under Article 146(5) at the time of the order under Article 147.**]**

(3) Subject to paragraphs (1) and (2)[F110]. . . , if an order under Article 147 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—

(a) an award of compensation for unfair dismissal (calculated in accordance with Articles 152 to**[**F112 161**]**), and

(b) except where this sub-paragraph does not apply, an additional award of compensation of**[**F110 an amount not less than twenty#six nor more than fifty#two weeks pay**]** ,

to be paid by the employer to the employee.

(4) Paragraph (3)(b) does not apply where—

(a) the employer satisfies the tribunal that it was not practicable to comply with the order,F110. . .

Sub#para. (b) rep. by 1999 NI 9
Paras. (5), (6) rep. by 1999 NI 9

(7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of paragraph (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(8) Where in any case an industrial tribunal finds that the complainant has unreasonably prevented an order under Article 147 from being complied with, in making an award of compensation for unfair dismissalF113. . . it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

F109 mod. by SR 2002/120
F110 1999 NI 9
F111 2003 NI 15
F112 2003 NI 15
F113 1998 NI 8

Compensation

General

152.—(1) F114. . . Where a tribunal makes an award of compensation for unfair dismissal under Article 146(4) or 151(3)(a) the award shall consist of—

(a) a basic award (calculated in accordance with Articles 153 to 156,160 and 161), and

(b) a compensatory award (calculated in accordance with Articles 157, 158**[**F115, 158A**]**, 160**[**F114 and 161F116. . . **]**).

Paras. (2), (3) rep. by 1999 NI 9

Para. (4) rep. by 2003 NI 15

F114 1999 NI 9
F115 Words in art. 152(1)(b) inserted (15.1.2006) by Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005 (S.I. 2005/3424 (N.I. 20)), **arts. 1(2)**, 5(2)
F116 2003 NI 15

Basic award

153.—(1) Subject to the provisions of this Article, Articles 154 to 156 and Articles 160 and 161, the amount of the basic award shall be calculated by—

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In paragraph (1)(c) "the appropriate amount" means—

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

(b) one week's pay for a year of employment (not within sub-paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for a year of employment not within sub-paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under paragraph (1), no account shall be taken under that paragraph of any year of employment earlier than those twenty years.

(4) [F117] . . . . . .

(5) [F117] . . . . . .

Para. (6) rep. by 1999 NI 9

F117 Art. 153(4)(5) repealed (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53, Sch. 7 para. 3(8), **Sch. 8(1)** (with reg. 50)

Basic award: minimum in certain cases

154.—(1) The amount of the basic award (before any reduction under Article 156) shall not be less than**[**[F118]£4,700**]** where the reason (or, if more than one, the principal reason)—

(a) in a redundancy case, for selecting the employee for dismissal, or

(b) otherwise, for the dismissal,

is one of those specified in Article 132(1)(a) and (b),**[**[F119] 132A(d),**]** 133(1), 134 or 136(1).

[[F120](1A) Where—

(a) an employee is regarded as unfairly dismissed by virtue of Article **[**[F121]130ZG or**]** 130A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason),

(b) an award of compensation falls to be made under Article 146(4), and

(c) the amount of the award under Article 152(1)(a), before any reduction under Article 156(3A) or (4), is less than the amount of four weeks' pay,

the industrial tribunal shall, subject to paragraph (1B), increase the award under Article 152(1)(a) to the amount of four weeks' pay.

(1B) An industrial tribunal shall not be required by paragraph (1A) to increase the amount of an award if it considers that the increase would result in injustice to the employer.**]**

Para. (2) rep. by 1999 NI 9

F118 Words in art. 154(1) substituted (15.2.2009) by Employment Rights (Increase of Limits) Order (Northern Ireland) 2009 (S.R. 2009/45), art. 3, **Sch.** (with art. 4)

F119 SR 1998/386

F120 2003 NI 15

F121 Words in art. 154(1A)(a) inserted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 3(9)** (with reg. 50)

Basic award of two weeks' pay in certain cases

155. The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee—

(a) by virtue of Article 173 is not regarded as dismissed for the purposes of Part XII, or

(b) by virtue of Article 176 is not, or (if he were otherwise entitled) would not be, entitled to a redundancy payment.

Basic award: reductions

156.—(1) Where the 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.

(2) Where the 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.

(3) Paragraph (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in Article 132(1)(a) and (b),**[**[F122] 132A(d),**]** 133(1), 134 or 136(1); and in such a case paragraph (2) applies only to so much of the basic award as is payable because of Article 154.

[[F123](3A) Where the complainant has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement, 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 award.**]**

(4) The amount of the basic award shall be reduced or further reduced by the amount of—

(a) any redundancy payment awarded by the tribunal under Part XII in respect of the same dismissal, or

(b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XII or otherwise).

F122 SR 1998/386
F123 1998 NI 8

Compensatory award

157.—(1) Subject to the provisions of this Article and Articles 158**[**[F124], 158A**]**, 160**[**[F125] and 161**]**, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in paragraph (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to paragraph (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in paragraph (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XII or otherwise), or

(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under Article 156) in respect of the same dismissal.

(4) In ascertaining the loss referred to in paragraph (1) 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) In determining, for the purposes of paragraph (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—

(a) calling, organising, procuring or financing a strike or other industrial action, or

(b) threatening to do so,

was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

(7) If the amount 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 Part XII or otherwise) exceeds the amount of the basic award which would be payable but for Article 156(4), that excess goes to reduce the amount of the compensatory award.

[[F126](8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under Article 151(3)(a), there shall be deducted from the compensatory award any award made under Article 146(5) at the time of the order under Article 147.**]**

F124 Words in art. 157(1) inserted (15.1.2006) by Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005 (S.I. 2005/3424 (N.I. 20)), **arts. 1(2)**, 5(2)
F125 2003 NI 15
F126 2003 NI 15

Limit of compensatory award etc.

158.—(1) The amount of—

(a) any compensation awarded to a person under Article 151(1) and (2), or

(b) a compensatory award to a person calculated in accordance with Article 157,

shall not exceed**[**[F127]£65,300**]**.

[[F128](1A) Paragraph (1) shall not apply to compensation awarded, or a compensatory award made, to a person in a case where he is regarded as unfairly dismissed by virtue of Article 132, 134A, 137(3) or 137(5A).**]**
Para. (2) rep. by 1999 NI 9

(3) In the case of compensation awarded to a person under Article 151(1) and (2), the limit imposed by this Article may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under Article 148(2)(a) or Article 149(2)(d).

(4) Where—

(a) a compensatory award is an award under sub-paragraph (a) of paragraph (3) of Article 151, and

(b) an additional award falls to be made under sub-paragraph (b) of that paragraph,

the limit imposed by this Article on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under Article 148(2)(a) or Article 149(2)(d).

(5) The limit imposed by this Article applies to the amount which the industrial tribunal would, apart from this Article, award in respect of the subject matter of the complaint after taking into account—

(a) any payment made by the respondent to the complainant in respect of that matter, and

(b) any reduction in the amount of the award required by any statutory provision or rule of law.

F127 Words in art. 158(1) substituted (7.3.2010) by Employment Rights (Revision of Limits) Order (Northern Ireland) 2010 (S.R. 2010/61), art. 2, **Sch.** (with art. 3)
F128 1999 NI 9

[F129 Adjustments under the Employment (Northern Ireland) Order 2003

158A. Where an award of compensation for unfair dismissal falls to be—

(a) reduced or increased under Article 17 of the Employment (Northern Ireland) Order 2003 (non-completion of statutory procedures); or

(b) increased under Article 27 of that Order (failure to give statement of employment particulars),

the adjustment shall be in the amount awarded under Article152(1)(b) and shall be applied immediately before any reduction under Article 157(6) or (7).**]**

F129 2003 NI 15

Art. 159 rep. by 1999 NI 9

Acts which are both unfair dismissal and discrimination

160.—[F130(1) Where compensation falls to be awarded in respect of any act both under—

(a) the provisions of this Order relating to unfair dismissal, and

[F131(b) any one or more of the following—

(i) the Sex Discrimination (Northern Ireland) Order 1976;

(ii) the Disability Discrimination Act 1995;

(iii) the Race Relations (Northern Ireland) Order 1997;

(iv) the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003;

(v) the Employment Equality (Age) Regulations (Northern Ireland) 2006.**]**

an industrial tribunal shall not award compensation under any one of those F132. . . Orders**[**F133 or Regulations**]** in respect of any loss or other matter which is or has been taken into account under**[**F132 any other of them**]** by the tribunal (or another industrial tribunal) in awarding compensation on the same or another complaint in respect of that act.**]**

(2) Where compensation falls to be awarded in respect of any act both under the**[**F134 Fair Employment and Treatment (Northern Ireland) Order 1998**]** and under the provisions of this Order relating to unfair dismissal, an industrial tribunal shall not award compensation under this Order in respect of any loss or other matter which has been taken into account under**[**F134 the Fair Employment

and Treatment (Northern Ireland) Order 1998**]** by the Fair Employment Tribunal for Northern Ireland in awarding compensation on a complaint in respect of that act.

F130 1997 NI 6
F131 Art. 160(1)(b) substituted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 3(10)** (with reg. 50)
F132 1998 NI 8
F133 SR 2003/497
F134 1998 NI 21

Matters to be disregarded in assessing contributory fault

161.—(1) Where an industrial tribunal makes an award of compensation for unfair dismissal in a case where the dismissal is unfair by virtue of Article 136 or Article 137(1) and (7), 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,[F135]. . .

(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**[**[F135], or**]**

[[F135](d) not to make use of services made available by any trade union or by a particular trade union or by 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.

[[F135](2A) Conduct or action of the complainant shall be disregarded in so far as it constitutes acceptance of or failure to accept an offer made in contravention of Article 77A or 77B.**]**

(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 136(3)(a) or an objection, or proposed, objection, (however expressed) to the operation of a provision of a kind mentioned in Article 136(3)(b)).

F135 2004 NI 19

Art. 162 rep. by 1999 NI 9

Art. 162A rep. by 2003 NI 15

Art. 162B rep. by 1999 NI 9

Interim relief

Interim relief pending determination of complaint

163.—(1) An employee who presents a complaint to an industrial tribunal—

(a) that he has been unfairly dismissed by his employer, and

(b) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in Article 132(1)(a) and (b),**[**[F136] 132A(d),**]** 133(1), 134**[**[F137],134A**]** or 136(1),**[**[F138] or in paragraph 161(2) of Schedule 1A to the Trade Union and Labour Relations Order**]**

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**[**[F139] Article 136(1)(a), (b) or (ba), or on Article 136(1)(bb) otherwise than in relation to an offer made in contravention of Article 77A(1)(d),**]** 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 169 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.

F136 SR 1998/386
F137 1998 NI 17
F138 1999 NI 9
F139 2004 NI 19

Modifications etc. (not altering text)

C32 Arts. 163-167 applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 13(6)** (with reg. 50)

Procedure on hearing of application and making of order

164.—(1) This Article applies where, 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 that the reason (or, if more than one, the principal reason) for his dismissal is one of those specified in Article 132(1)(a) and (b),**[**[F140] 132A(d),**]** 133(1), 134**[**[F141],134A**]** or 136(1)**[**[F142] or in paragraph 161(2) of Schedule 1A to the Trade Union and Labour Relations Order**]**.

(2) The tribunal shall announce its findings and explain to both parties (if present)—

(a) what powers the tribunal may exercise on the application, and

(b) in what circumstances it will exercise them.

(3) The tribunal 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 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.

(4) For the purposes of paragraph (3)(b) "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.

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

(6) If the employer—

(a) states that he is willing to re-engage the employee in another job, and

(b) 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.

(7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.

(8) If the employee is not willing to accept the job on those terms and conditions—

(a) where 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, and

(b) otherwise, the tribunal shall make no order.

(9) If on the hearing of an application for interim relief the employer—

(a) fails to attend before the tribunal, or

(b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in paragraph (3),

the tribunal shall make an order for the continuation of the employee's contract of employment.

F140 SR 1998/386
F141 1998 NI 17
F142 1999 NI 9

Modifications etc. (not altering text)

C33 Arts. 163-167 applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 13(6)** (with reg. 50)

Order for continuation of contract of employment

165.—(1) An order under Article 164 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 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 to the following provisions, 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 a 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, goes 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 goes 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.

Modifications etc. (not altering text)

C34 Arts. 163-167 applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 13(6)** (with reg. 50)

Application for variation or revocation of order

166.—(1) At any time between—

(a) the making of an order under Article 164, and

(b) 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 163 and 164 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 163(3), and

(b) in the case of an application by the employer, Article 163(8) has effect with the substitution of a reference to the employee for the reference to the employer.

Modifications etc. (not altering text)

C35 Arts. 163-167 applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 13(6)** (with reg. 50)

Consequence of failure to comply with order

167.—(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 164(5) or (7), the tribunal shall—

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

(b) order the employer to pay compensation to the employee.

(2) on under paragraph (1)(b) shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard—

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

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

(3) Article 165 applies to an order under paragraph (1)(a) as in relation to an order under Article 164.

(4) 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 paragraph (5) or (6) applies.

(5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order—

(a) the tribunal shall determine the amount owed by the employer on the date of the determination, and

(b) 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.

Modifications etc. (not altering text)

C36 Arts. 163-167 applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 13(6)** (with reg. 50)

CHAPTER III

SUPPLEMENTARY

Death of employer or employee

168.—(1) Where—

(a) an employer has given notice to an employee to terminate his contract of employment, and

(b) before that termination the employee or the employer dies,

this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

(2) Where—

(a) an employee's contract of employment has been terminated,

(b) by virtue of paragraph (2) or (4) of Article 129 a date later than the effective date of termination as defined in paragraph (1) of that Article is to be treated for certain purposes as the effective date of termination, and

(c) the employer or the employee dies before that date,

paragraph (2) or (4) of Article 129 applies as if the notice referred to in that paragraph as required by Article 118 expired on the date of the death.

(3) Where an employee has died, Articles 147 to 150 do not apply; and, accordingly, if the industrial tribunal finds that the grounds of the complaint are well-founded, the case shall be treated as falling within Article 146(4) as a case in which no order is made under Article 147.

(4) Paragraph (3) does not prejudice an order for reinstatement or re-engagement made before the employee's death.

(5) Where an order for reinstatement or re-engagement has been made and the employee dies before the order is complied with—

(a) if the employer has before the death refused to reinstate or re-engage the employee in accordance with the order, paragraphs (3) to (6) of Article 151 apply, and an award shall be made under paragraph (3)(b) of that Article, unless the employer satisfies the tribunal that it was not practicable at the time of the refusal to comply with the order, and

(b) if there has been no such refusal, paragraphs (1) and (2) of that Article apply if the employer fails to comply with any ancillary terms of the order which remain capable of fulfilment after the employee's death as they would apply to such a failure to comply fully with the terms of an order where the employee had been reinstated or re-engaged.

Awards against third parties

169.—(1) If in proceedings before an industrial tribunal on a complaint of unfair dismissal either the employer or the complainant claims—

(a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, and

(b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union or of one of a number of particular trade unions,

the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused after that time; and no such request may be made after the tribunal has made an award of compensation for unfair dismissal or an order under Article 147.

(3) Where a person has been so joined as a party to the proceedings and the tribunal—

(a) makes an award of compensation for unfair dismissal, and

(b) finds that the claim mentioned in paragraph (1) is well-founded,

the tribunal may order that the compensation shall be paid by that person instead of the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable.

[[F143]Application to police

169A.—(1) For the purposes of Article 132, and of the other provisions of this Part so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of Article 132, the holding, otherwise than under a contract of employment, of the office of constable shall be treated as employment by the relevant officer under a contract of employment.

[[F144](2) In this Article "the relevant officer", in relation to a person holding the office of constable, means the person who under Article 47A of the Health and Safety at Work (Northern Ireland) Order 1978 is to be treated as his employer for the purposes of Part II of that Order.**]]**

F143 1997 NI 16

F144 Art. 169A(2) substituted (25.7.2006 with effect as mentioned in s. 27(4) of the amending Act) by Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), **ss. 27(2)(b)(3)**, 31(1)(f) (with s. 27(5))

Status:
Point in time view as at 01/10/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
The Employment Rights (Northern Ireland) Order 1996, PART XI is up to date with all changes known to be in force on or before 23 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.