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STATUTORY INSTRUMENTS

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**1996 No. 1919**

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

PART XI

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

*The right*

**The right**

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

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

*Dismissal*

**Circumstances in which an employee is dismissed**

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

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

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

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

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

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

**128.**—(1) Where an employee who—

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

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

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

### **Effective date of termination**

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

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

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

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

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

- (4) Where—

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

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

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

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

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

### *Fairness*

#### **General**

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

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

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

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- (b) relates to the conduct of the employee,
- (c) is that the employee was redundant, or
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under a statutory provision.

- (3) In paragraph (2)(a)—

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

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

(4) Where the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)

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

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

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

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

### **Pregnancy and childbirth**

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Where—

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

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

### **Health and safety cases**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Trustees of occupational pension schemes**

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

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

**Employee representatives**

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

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

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

**Assertion of statutory right**

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

- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or
  - (b) alleged that the employer had infringed a right of his which is a relevant statutory right.
- (2) It is immaterial for the purposes of paragraph (1)—
- (a) whether or not the employee has the right, or
  - (b) whether or not the right has been infringed;

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

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

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

**Trade union membership or activities**

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

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

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

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

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

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

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

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

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

## **Redundancy**

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

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

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

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

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

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

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

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

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

### **Replacements**

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

(2) This Article applies to an employee where—

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

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

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

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

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

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

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

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



### *Exclusion of right*

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

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

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

(3) Paragraph (1) does not apply if—

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

#### **Upper age limit**

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

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

(2) Paragraph (1) does not apply if—

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

**Dismissal procedures agreements**

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

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

(2) Paragraph (1) does not apply if—

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

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

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

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

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

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

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

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

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

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

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

(2) Paragraph (1) does not apply if—

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

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

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

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

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

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

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

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

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

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

**Dismissals in connection with other industrial action**

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

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

(2) This Article does not apply if—

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

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

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

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

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

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

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

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

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

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

- (a) before the end of the period of six months beginning with the date of the complainant’s dismissal; or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of six months.

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

## 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 162) to be paid by the employer to the employee.

### *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.

(5) Where a dismissal is treated as taking place by virtue of Article 128, references in this Article to the date of termination of employment are to the notified date of return.

#### **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.

(4) Where a dismissal is treated as taking place by virtue of Article 128, references in this Article to the date of termination of employment are to the notified date of return.

#### **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.**—(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, 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.

(3) Subject to paragraphs (1) and (2), 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 162), and
- (b) except where this sub-paragraph does not apply, an additional award of compensation of the appropriate amount,

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, or
- (b) the reason (or, if more than one, the principal reason)—
  - (i) in a redundancy case, for selecting the employee for dismissal, or
  - (ii) otherwise, for the dismissal,

is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1).

(5) In paragraph (3)(b) “the appropriate amount” means—

- (a) where the dismissal is of a description referred to in paragraph (6), not less than twenty-six nor more than fifty-two weeks' pay, and
- (b) in any other case, not less than thirteen nor more than twenty-six weeks' pay.

(6) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with paragraph (5)(a) are—

- (a) a dismissal which is an act of discrimination within the meaning of the Sex Discrimination (Northern Ireland) Order 1976 which is unlawful by virtue of that Order, and
- (b) a dismissal which is an act of discrimination within the meaning of the Fair Employment (Northern Ireland) Act 1976 which is unlawful by virtue of Part III of that Act.

(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 dismissal (in accordance with Articles 152 to 162) it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.



## *Compensation*

### **General**

**152.**—(1) 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, 160 to 162).

(2) Where this paragraph applies, the award shall also include a special award calculated in accordance with Article 159 unless—

- (a) the complainant does not request the tribunal to make an order under Article 147, or
- (b) the case falls within Article 155.

(3) Paragraph (2) applies 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), 133(1), 134 or 136(1).

### **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) Where the effective date of termination is after the sixty-fourth anniversary of the day of the employee's birth, the amount arrived at under paragraphs (1) to (3) shall be reduced by the appropriate fraction.

(5) In paragraph (4) “the appropriate fraction” means the fraction of which—

- (a) the numerator is the number of whole months reckoned from the sixty-fourth anniversary of the day of the employee's birth in the period beginning with that anniversary and ending with the effective date of termination, and
- (b) the denominator is twelve.

(6) Paragraphs (4) and (5) do not apply to a case within Article 128(1).

**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 £2,770 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), 133(1), 134 or 136(1).

- (2) The Department may by order increase the sum specified in paragraph (1).

**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), 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.

(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).

**Compensatory award**

**157.**—(1) Subject to the provisions of this Article and Articles 158, 160 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.

#### **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 £11,300.

(2) The Department may by order increase the sum specified in paragraph (1).

(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.

### **Special award**

**159.**—(1) Subject to the following provisions, the amount of the special award shall be—

- (a) one week's pay multiplied by 104, or
- (b) £13,775,

whichever is the greater, but shall not exceed £27,500.

(2) Where the award of compensation is made under Article 151(3)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the order under Article 147, the amount of the special award shall be increased to—

- (a) one week's pay multiplied by 156, or
- (b) £20,600,

whichever is the greater (but subject to the following provisions).

(3) In a case where the amount of the basic award is reduced under Article 153(4), the amount of the special award shall be reduced by the same fraction.

(4) 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 special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(5) Where the tribunal finds that the complainant has unreasonably—

- (a) prevented an order under Article 147 from being complied with, or
- (b) refused an offer by the employer (made otherwise than in compliance with such an order) 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 special award to such extent as it considers just and equitable having regard to that finding.

(6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining for the purposes of paragraph (2) whether it was practicable to comply with an order under Article 147 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.

(7) The Department may by order increase any of the sums specified in paragraphs (1) and (2).

### **Acts which are both unfair dismissal and discrimination**

**160.**—(1) Where compensation falls to be awarded in respect of any act both under the Sex Discrimination (Northern Ireland) Order 1976 and under the provisions of this Order relating to unfair dismissal, an industrial tribunal shall not award compensation under that Order or this Order in respect of any loss or other matter which is or has been taken into account under the other Order 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 Fair Employment (Northern Ireland) Act 1976 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 that Act by the Fair Employment Tribunal for Northern Ireland in awarding compensation on a complaint in respect of that act.

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

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

(3) Conduct or action of the complainant shall be disregarded in so far as it constitutes a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in Article 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)).

### **Dismissal of woman at or after end of maternity leave period**

**162.** Where Article 116 applies in relation to an employee, compensation in any unfair dismissal proceedings shall be assessed without regard to the right conferred on the employee by Article 111,

#### *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), 133(1), 134 or 136(1), may apply to the tribunal for interim relief.

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

(3) In a case where the employee relies on Article 136(1)(a) or (b) the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—

- (a) that on the date of the dismissal the employee was or proposed to become a member of the union, and
- (b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

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

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

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

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

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

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

(9) If a request under Article 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.

### **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), 133(1), 134 or 136(1).

(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.

### **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.

**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.

**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.

**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.