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STATUTORY INSTRUMENTS

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**1996 No. 1919**

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

**PART XV**

**MISCELLANEOUS**

**CHAPTER I**

**PARTICULAR TYPES OF EMPLOYMENT**

*Crown employment etc.*

**Crown employment**

**236.**—(1) Subject to Articles 237 and 238, the provisions of this Order to which this Article applies have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other employees or workers.

(2) This Article applies to—

- (a) Parts I to IX,
- (b) in Part X, Articles 124 and 125,
- (c) Part XI, and
- (d) this Part and Part XVI.

(3) In this Order “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision.

(4) For the purposes of the application of provisions of this Order in relation to Crown employment in accordance with paragraph (1)—

- (a) references to an employee or a worker shall be construed as references to a person in Crown employment,
- (b) references to a contract of employment, or a worker’s contract, shall be construed as references to the terms of employment of a person in Crown employment,
- (c) references to dismissal, or to the termination of a worker’s contract, shall be construed as references to the termination of Crown employment,
- (d) references to redundancy shall be construed as references to the existence of such circumstances as are treated, in accordance with any arrangements falling within Article 212(3) or (4) for the time being in force, as equivalent to redundancy in relation to Crown employment, and
- (e) references to an undertaking shall be construed—
  - (i) in relation to a Minister of the Crown, as references to his functions or (as the context may require) to the department of which he is in charge, and

- (ii) in relation to a government department, officer or body, as references to the functions of the department, officer or body or (as the context may require) to the department, officer or body.

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

- (a) certain political activities, or
- (b) activities which may conflict with his official functions,

nothing in Article 78 requires him to be allowed time off work for public duties connected with any such activities.

(6) Part II applies in relation to Crown employment otherwise than under a contract only where the terms of employment correspond to those of a contract of employment.

(7) Article 27, and the other provisions of Part II applying in relation to that Article, bind the Crown so far as they relate to the activities of an employment agency in relation to employment to which those provisions apply.

(8) Articles 194 and 195 are without prejudice to any exemption or immunity of the Crown.

### **Armed forces**

**237.**—(1) Article 236—

- (a) applies to service as a member of the naval, military or air forces of the Crown but subject to the following provisions of this Article, and
- (b) applies to employment by an association established for the purposes of Part VI of the Reserve Forces Act 1980.

(2) The provisions of this Order which have effect by virtue of Article 236 in relation to service as a member of the naval, military or air forces of the Crown are—

- (a) Parts I and III,
- (b) in Part VII, Articles 83 to 85,
- (c) Parts VIII and IX,
- (d) in Part X, Articles 124 and 125,
- (e) Part XI, apart from Articles 132 to 134 and 136, and
- (f) this Part and Part XVI.

(3) The Department may by order—

- (a) amend paragraph (2) by making additions to, or omissions from, the provisions for the time being specified in that paragraph, and
- (b) make any provision for the time being so specified apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the order,

but no provision contained in Part IV may be added to the provisions for the time being specified in paragraph (2).

(4) Modifications made by an order under paragraph (3) may include provision precluding the making of a complaint or reference to any industrial tribunal unless the person aggrieved has availed himself of the service redress procedures applicable to him.

(5) Where modifications made by an order under paragraph (3) include provision such as is mentioned in paragraph (4), the order shall also include provision designed to secure that the service redress procedures result in a determination, or what is to be treated under the order as

a determination, in sufficient time to enable a complaint or reference to be made to an industrial tribunal.

(6) In paragraphs (4) and (5) “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in—

- (a) sections 180 and 181 of the Army Act 1955,
- (b) sections 180 and 181 of the Air Force Act 1955, and
- (c) section 130 of the Naval Discipline Act 1957.

(7) No provision shall be made by virtue of paragraph (4) which has the effect of substituting a period longer than six months for any period specified as the normal period for a complaint or reference.

(8) In paragraph (7) “the normal period for a complaint or reference”, in relation to any matter within the jurisdiction of an industrial tribunal, means the period specified in the relevant statutory provision as the period within which the complaint or reference must be made (disregarding any provision permitting an extension of that period at the discretion of the tribunal).

### **National security**

**238.**—(1) The provisions of this Order to which this Article applies do not have effect in relation to any Crown employment in respect of which there is in force a certificate issued by or on behalf of the Secretary of State certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from those provisions for the purpose of safeguarding national security.

(2) This Article applies to—

- (a) Part II,
- (b) Part III, so far as it relates to itemised pay statements,
- (c) Part V,
- (d) Chapter II of Part VI;
- (e) in Part VII, Articles 78 to 82 and 92 to 95;
- (f) in Part VIII, Articles 96 and 97, and Articles 101 and 102 so far as relating to those Articles,
- (g) in Part X, Articles 124 and 125, except where they apply by virtue of Article 124(4),
- (h) Part XI, except so far as relating to a dismissal which is treated as unfair—
  - (i) by Article 131(1) to (3), 132 or 134, or
  - (ii) by paragraph (1) of Article 137 by reason of the application of paragraph (2), (3) or (5) of that Article, and
- (i) Part I, this Part and Part XVI (so far as relating to any of the provisions specified in subparagraphs (a) to (h)).

(3) Any document purporting to be a certificate issued as mentioned in paragraph (1)—

- (a) shall be received in evidence, and
- (b) unless the contrary is proved, shall be deemed to be such a certificate.

*Excluded classes of employment***Employment outside Northern Ireland**

**239.**—(1) Articles 33 to 39 and Articles 118 to 123 do not apply in relation to employment during any period when the employee is engaged in work wholly or mainly outside Northern Ireland unless—

- (a) the employee ordinarily works in Northern Ireland and the work outside Northern Ireland is for the same employer, or
- (b) the law which governs his contract of employment is the law of Northern Ireland.

(2) The provisions to which this paragraph applies do not apply to employment where under the employee's contract of employment he ordinarily works outside Northern Ireland.

(3) Paragraph (2) applies to—

- (a) Part II
- (b) in Part III, Articles 40 to 42,
- (c) Parts IV, V and VI,
- (d) Part VII, apart from Articles 86 to 88,
- (e) Parts VIII and IX,
- (f) in Part X, Articles 124 and 125,
- (g) (subject to paragraph (4)) Part XI, and
- (h) Part XIII.

(4) Part XI applies to employment where under her contract of employment the employee ordinarily works outside Northern Ireland if—

- (a) Article 116 applies to her dismissal, or
- (b) she is treated as dismissed by Article 128.

(5) For the purposes of paragraphs (2) and (4), a person employed to work on board a ship registered in the United Kingdom shall be regarded as a person who under his contract ordinarily works in Northern Ireland unless—

- (a) the ship is registered at a port outside Northern Ireland,
- (b) the employment is wholly outside Northern Ireland, or
- (c) the person is not ordinarily resident in Northern Ireland.

(6) An employee—

- (a) is not entitled to a redundancy payment if he is outside Northern Ireland on the relevant date unless under his contract of employment he ordinarily worked in Northern Ireland, and
- (b) is not entitled to a redundancy payment if under his contract of employment he ordinarily works outside Northern Ireland unless on the relevant date he is in Northern Ireland in accordance with instructions given to him by his employer.

(7) Part XIV does not apply to employment where, under the employee's contract of employment, he ordinarily works outside the territory of the member States of the European Communities and of Norway and Iceland.

### **Fixed-term contracts**

**240.**—(1) Part XI does not apply to dismissal from employment under a contract for a fixed term of one year or more if—

- (a) the dismissal consists only of the expiry of that term without its being renewed, and
- (b) before the term expires the employee has agreed in writing to exclude any claim in respect of rights under that Part in relation to the contract.

(2) An employee employed under a contract of employment for a fixed term of two years or more is not entitled to a redundancy payment in respect of the expiry of that term without its being renewed (whether by the employer or by an associated employer of his) if, before the term expires, the employee has agreed in writing to exclude any right to a redundancy payment in that event.

(3) An agreement such as is mentioned in paragraph (1) or (2) may be contained—

- (a) in the contract itself, or
- (b) in a separate agreement.

(4) Where—

- (a) an agreement such as is mentioned in paragraph (2) is made during the currency of a fixed term, and
- (b) the term is renewed,

the agreement shall not be construed as applying to the term as renewed; but this paragraph is without prejudice to the making of a further agreement in relation to the renewed term.

### **Short-term employment**

**241.**—(1) Articles 33 to 39 do not apply to an employee if his employment continues for less than one month.

(2) The provisions of Part XIII do not apply to employment—

- (a) under a contract for a fixed term of three months or less, or
- (b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

where the employee has not been continuously employed for a period of more than three months.

### **Mariners**

**242.**—(1) Articles 33 to 39, Part IV and Articles 118 to 123 do not apply to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State.

(2) Part II, Articles 40 to 42, Part V, Part VI (other than Article 69), Part VII (other than Articles 86 to 88), Parts VIII and IX, Articles 124 and 125 and (subject to paragraph (3)) Parts XI to XIV do not apply to employment as master, or as a member of the crew, of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel.

(3) Part XI applies to employment such as is mentioned in paragraph (2) if—

- (a) Article 116 applies to the employee's dismissal, or
- (b) she is treated as dismissed by Article 128,

and Part XII applies to employment such as is so mentioned if the employee is treated as dismissed by Article 172.

(4) Articles 40 to 42 and 78 to 82 and Part XIV do not apply to employment as a merchant seaman.

(5) In paragraph (4) “employment as a merchant seaman”—

- (a) does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer, but
- (b) subject to that, includes—
  - (i) employment as a master or a member of the crew of any ship,
  - (ii) employment as a trainee undergoing training for the sea service, and
  - (iii) employment in or about a ship in port by the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on a ship while it is in port.
- (6) Article 239(6) does not apply to an employee, and Article 240(3) does not apply to a contract of employment, if the employee is—
  - (a) employed as a master or seaman in a British ship, and
  - (b) ordinarily resident in Northern Ireland.

### **Police officers**

**243.**—(1) Articles 40 to 42, Part V, Part VI (other than Article 69), Part VII (other than Articles 86 to 88), Parts VIII and IX, Articles 124 and 125, Part XI, Article 172 and Part XIII do not apply to employment under a contract of employment in police service or to persons engaged in such employment.

(2) Part II does not apply in relation to police service.

(3) In this Article “police service” means—

- (a) service as a member of the Royal Ulster Constabulary or Royal Ulster Constabulary Reserve;
- (b) subject to—
  - (i) section 126 of the Criminal Justice and Public Order Act 1994 (prison staff not to be regarded as in police service), and
  - (ii) Article 19 of the Airports (Northern Ireland) Order 1994 (airport constables not to be regarded as in police service),
 service in any other capacity by virtue of which a person has the powers or privileges of a constable.

## **CHAPTER II**

### **OTHER MISCELLANEOUS MATTERS**

#### *Restrictions on disclosure of information*

### **National security etc.**

**244.**—(1) Where in the opinion of the Secretary of State the disclosure of any information would be contrary to the interests of national security or would endanger public safety or public order—

- (a) nothing in any of the provisions to which this Article applies requires any person to disclose the information, and
- (b) no person shall disclose the information in any proceedings in any court or tribunal relating to any of those provisions.
- (2) This Article applies to—
  - (a) Part III, so far as it relates to employment particulars,

- (b) in Part VI, Articles 68 and 70, and Articles 71 and 72 so far as relating to those Articles,
- (c) in Part VII, Articles 83 to 85 and 89 to 91,
- (d) in Part VIII, Articles 98 to 100, and Articles 101 and 102 so far as relating to those Articles,
- (e) Part IX,
- (f) in Part X, Articles 124 and 125 where they apply by virtue of Article 124(4),
- (g) Part XI so far as relating to a dismissal which is treated as unfair—
  - (i) by Article 131(1) to (3), 132 or 134, or
  - (ii) by paragraph (1) of Article 137 by reason of the application of paragraph (2), (3) or (5) of that Article, and
- (i) Part I, this Part and Part XVI (so far as relating to any of the provisions in sub-paragraphs (a) to (g)).

*Contracting out etc. and remedies*

**Restrictions on contracting out**

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

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

(2) Paragraph (1)—

- (a) does not apply to any provision in a collective agreement excluding rights under Article 60 if an order under Article 67 is for the time being in force in respect of it,
- (b) does not apply to any provision in a dismissal procedures agreement excluding the right under Article 126 if that provision is not to have effect unless an order under Article 142 is for the time being in force in respect of it,
- (c) does not apply to any provision in an agreement if an order under Article 192 is for the time being in force in respect of it,
- (d) does not apply to any provision of an agreement relating to dismissal from employment such as is mentioned in Article 240(1) or (3),
- (e) does not apply to any agreement to refrain from instituting or continuing proceedings where the Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996, and
- (f) does not apply to any agreement to refrain from instituting or continuing before an industrial tribunal any proceedings within Article 20(1)(c) (proceedings under this Order where conciliation available) of the Industrial Tribunals (Northern Ireland) Order 1996 if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement, and
- (g) does not apply to any provision of a collective agreement excluding rights under Part XIII if an order under Article 226 is in force in respect of it.

(3) For the purposes of paragraph (2)(f) the conditions regulating compromise agreements under this Order are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,

- (c) the employee or worker must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal.
  - (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice,
  - (e) the agreement must identify the adviser, and
  - (f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.
- (4) In paragraph (3)—
- “independent”, in relation to legal advice received by an employee or worker, means that the advice is given by a lawyer who is not acting in the matter for the employer or an associated employer, and
- “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

### **Law governing employment**

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

- (2) Paragraph (1) is subject to Article 239(1)(b).

### **Remedy for infringement of certain rights**

**247.**—(1) The remedy of an employee for infringement of any of the rights conferred by Article 40, Parts V to IX, Article 124, Part XI, Part XIII and Part XIV is, where provision is made for a complaint or the reference of a question to an industrial tribunal, by way of such a complaint or reference and not otherwise.

(2) The remedy of a worker in respect of any contravention of Article 45, 47, 50(1) or 53(1) is by way of a complaint under Article 55 and not otherwise.

(3) The remedy of a person for conduct which is unlawful by virtue of Part II is by way of a complaint to an industrial tribunal in accordance with that Part, and not otherwise.

No other legal liability arises by reason that conduct is unlawful by virtue of that Part.

### *General provisions about death of employer or employee*

### **Institution or continuance of tribunal proceedings**

**248.**—(1) Where an employer has died, any tribunal proceedings arising under any of the provisions of this Order to which this Article applies may be defended by a personal representative of the deceased employer.

- (2) This Article and Article 249 apply to—

- (a) Part III, so far as it relates to itemised pay statements,
- (b) Part V,
- (c) Part VI,
- (d) Part VII, apart from Articles 86 to 88,



- (e) Parts VIII and IX,
- (f) in Part X, Articles 124 and 125, and
- (g) Parts XI to XIV.

(3) Where an employee has died, any tribunal proceedings arising under any of the provisions of this Order to which this Article applies may be instituted or continued by a personal representative of the deceased employee.

(4) If there is no personal representative of a deceased employee, any tribunal proceedings arising under any of the provisions of this Order to which this Article applies may be instituted or continued on behalf of the estate of the deceased employee by any appropriate person appointed by the industrial tribunal.

(5) In paragraph (4) “appropriate person” means a person who is—

- (a) authorised by the employee before his death to act in connection with the proceedings, or
- (b) the widow or widower, child, parent or brother or sister of the deceased employee;

and in Part XII and the following provisions of this Article and Article 249 references to a personal representative include a person appointed under paragraph (4).

(6) In a case where proceedings are instituted or continued by virtue of paragraph (4), any award made by the industrial tribunal shall be—

- (a) made in such terms, and
- (b) enforceable in such manner,

as the Department may by regulations provide.

(7) Any reference in the provisions of this Order to which this Article applies to the doing of anything by or in relation to an employer or employee includes a reference to the doing of the thing by or in relation to a personal representative of the deceased employer or employee.

(8) Any reference in the provisions of this Order to which this Article applies to a thing required or authorised to be done by or in relation to an employer or employee includes a reference to a thing required or authorised to be done by or in relation to a personal representative of the deceased employer or employee,

(9) Paragraphs (7) and (8) do not prevent a reference to a successor of an employer including a personal representative of a deceased employer.

### **Rights and liabilities accruing after death**

**249.**—(1) Any right arising under any of the provisions of this Order to which this Article applies which accrues after the death of an employee devolves as if it had accrued before his death.

(2) Where an industrial tribunal determines under any provision of Part XII that an employer is liable to pay to a personal representative of a deceased employee—

- (a) the whole of a redundancy payment to which he would have been entitled but for some provision of Part XII or Article 248, or
- (b) such part of such a redundancy payment as the tribunal thinks fit,

the reference in paragraph (1) to a right includes any right to receive it.

(3) Where—

- (a) by virtue of any of the provisions to which this Article applies a personal representative is liable to pay any amount, and
- (b) the liability has not accrued before the death of the employer,

it shall be treated as a liability of the deceased employer which had accrued immediately before his death.

### *Modifications of Order*

#### **Powers to amend Order**

**250.**—(1) The Department may by order—

- (a) provide that any provision of this Order which is specified in the order shall not apply to persons, or to employments, of such classes as may be prescribed in the order,
- (b) provide that any provision of this Order shall apply to persons or employments of such classes as may be prescribed in the order subject to such exceptions and modifications as may be so prescribed, or
- (c) vary, or exclude the operation of, any of the provisions to which this sub-paragraph applies.

(2) Paragraph (1)(c) applies to Articles 61(2), 97(2), 118(5), 124(3), 140(1), 141(1), 194, 195(1), 239(2), (3) and (5), Article 241(2) and 242(1), (2), (4) and (5).

(3) The Department may by order amend any of—

- (a) Articles 116, 117, 129(6), 130(5) and 131(4),
- (b) Articles 140(3), 141(2) and 142(2) so far as relating to Article 116, and
- (c) Articles 22(3)(a) and (5)(a), 23(4)(a), 148(5), 149(4), 153(6), 162, 172(2), 180(7), 181(3), 191(2), 192(6), 197(7), 239(4) and 242(3),

or modify the application of any of those provisions to any description of case.

(4) The Department may by order provide that, subject to any such modifications and exceptions as may be prescribed in the order, Article 68, and any other provisions of this Order so far as relating to that Article, shall apply to such descriptions of persons other than employees as may be so prescribed as to employees (but as if references to their employer were to such person as may be so prescribed).

(5) The provisions of this Article are without prejudice to any other power of the Department to amend, vary or repeal any provision of this Order or to extend or restrict its operation in relation to any person or employment.