

## SCHEDULES

### SCHEDULE 2

#### EMPLOYMENT PARTICULARS

#### PART II

#### ARTICLE 47 OF THE NO. 2 ORDER, AS SUBSTITUTED

##### *Enforcement of rights under Articles 43 to 45*

##### **References to industrial tribunals**

47.—(1) Where an employer does not give an employee a statement as required by Article 43 or 43C(1) or 44 (that is to say, either because he gives him no statement or because the statement he gives does not comply with those requirements) the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the relevant Article.

(2) Where—

- (a) a statement purporting to be a statement under Article 43 or 43C(1); or
- (b) a pay statement, or a standing statement of fixed deductions, purporting to comply with Article 44 or 45(1),

has been given to an employee, and a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of the relevant Article, either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.

(3) In this Article, a question as to the particulars which ought to have been included—

- (a) in a pay statement, or in a standing statement of fixed deductions, does not include a question solely as to the accuracy of an amount stated in any such particulars;
- (b) in the note required by Article 43B to be included in the statement under Article 43, does not include any question whether the employment is, has been or will be contracted-out employment for the purposes of Part IV of the Social Security Pensions (Northern Ireland) Order 1975.

(4) Where, on a reference under paragraph (1), an industrial tribunal determines particulars as being those which ought to have been included or referred to in a statement given under Article 43 or 43C(1), the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.

(5) On determining a reference under paragraph (2)(a), an industrial tribunal may either confirm the particulars as included or referred to in the statement given by the employer, or may amend those particulars, or may substitute other particulars for them, as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the tribunal.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(6) Where on a reference under this Article an industrial tribunal finds that an employer has failed to give an employee any pay statement in accordance with Article 44 or that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that Article or Article 45(1)—

- (a) the tribunal shall make a declaration to that effect; and
- (b) where the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

In this paragraph “unnotified deduction” means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction required by Article 44 or 45(1).

(7) An industrial tribunal shall not entertain a reference under this Article in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—

- (a) before the end of the period of three months beginning with the date on which the employment ceased; 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 application to be made before the end of that period of three months.