

SCHEDULES

SCHEDULE 6

Article 18(2).

CONSEQUENTIAL AMENDMENTS

*The Contracts of Employment and Redundancy
Payments Act (Northern Ireland) 1965 (c. 19 (N.I.))*

For section 6 substitute—

“6 Excluded categories of employees.

6. Sections 1 and 2 do not apply—

- (a) in relation to employment during any period when the employee is engaged in work wholly or mainly outside Northern Ireland unless—
 - (i) the employee ordinarily works in Northern Ireland and the work outside Northern Ireland is for the same employer; or
 - (ii) the law which governs his contract of employment is the law of Northern Ireland;
- (b) 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.”.

In section 58A(b) for “4(9) to (11A), 6(1)” substitute “6”.

In section 63(1) in the definition of “the Ministry” for the words “has the meaning assigned to it by section 4(12)” substitute “means the Department of Economic Development”.

In Schedule 1 in paragraph 5(1)(d) for “confinement” substitute “childbirth”.

In Schedule 1 for paragraph 5A substitute—

“5A. If an employee returns to work in accordance with Article 20 of the No. 2 Order or in pursuance of an offer made in the circumstances described in Article 31(2) of that Order after a period of absence from work wholly or partly occasioned by pregnancy or childbirth, every week during that period shall count in computing a period of employment, notwithstanding that it does not fall under paragraph 3, 4 or 4A.”.

In Schedule 2 in paragraph 2(1) after head (b) insert—

- “(b) the employee is absent from work wholly or partly because of pregnancy or childbirth; or”.

In Schedule 2 in paragraph 2(1) after “heads (a), (b)” insert “, (b)”.

In Schedule 2 in paragraphs 2(2) and 3(3) after “statutory sick pay” insert “maternity pay, statutory maternity pay”.

In Schedule 2 in paragraph 3(3) after head (a) insert—

- “(aa) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth; or”.

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The Industrial Relations (Northern Ireland) Order 1976 (NI 16)

In Article 22(3) for “Article 14” substitute “Article 29”.

For Article 22C substitute—

“Dismissal on ground of redundancy

22C.—(1) Where the reason or principal reason for the dismissal of an employee was that the employee was redundant, but 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—

- (a) that 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 22A(1); or
- (b) that 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 22B(1) (read with (2) and (3)); or
- (c) that 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 22D(1)(read with (2) and (3)); or
- (d) that 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 29(a) to (e) of the No. 2 Order; or
- (e) that the employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in the case of the employee,

then, for the purposes of this Order, the dismissal shall be regarded as unfair.

(2) For the purposes of this Part “a redundancy case” means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees is also shown.”.

In Article 23 after paragraph (2) insert—

“(2A) Paragraph (2) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in Article 22B(1) (read with (2) and (3)) of this Order or in Article 29 of the No. 2 Order.”.

In Article 23(3) for “22C and of Article 14” substitute “22D and of Article 29”.

For Article 24 substitute—

“Qualifying period and upper age limit

24.—(1) Subject to the following provisions of this Article, Article 20 does not apply to the dismissal of an employee from any employment if the employee—

- (a) was not continuously employed for a period of not less than two years ending with the effective date of termination; or
- (b) attained the following age on or before the effective date of termination, that is to say—
 - (i) if in the undertaking in which he was employed there was a normal retiring age for an employee holding the position which he held and the age was the

same whether the employee holding that position was a man or a woman, that normal retiring age; and

(ii) in any other case, the age of sixty-five.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in Article 9(1) of the No. 2 Order, paragraph (1)(a) shall have effect in relation to that dismissal as if for the words “two years” there were substituted “one month”.

(3) Paragraph (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified—

- (a) in Article 22A(1);
- (b) in Article 22B(1) (read with (2) and (3));
- (c) in Article 22D(1) (read with (2) and (3)); or
- (d) in Article 29(a) to (e) of the No. 2 Order.

(4) Paragraph (1) shall not apply to a case falling within Article 29(f) of the No. 2 Order.

(5) The Department may by order add to, vary, revoke or exclude the operation of any of the provisions of paragraph (1).”.

In Article 26 at the end add—

“(4) Paragraph (3) shall not apply to the right conferred by Article 22D(1) (read with (2) and (3)) of this Order or by Article 29 of the No. 2 Order.”.

In Article 32(2)(b) for the words from the beginning to “or in which” substitute “unless the case is one where this sub-paragraph is excluded or”.

In Article 32 after paragraph (2) insert—

“(2A) Paragraph (2)(b) is excluded where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was one of those specified in—

- (a) Article 22A(1); or
- (b) Article 22B(1)(a) and (b).”.

In Article 36(3) for “Article 35(6A) to (7)” substitute “Article 34(10) to (13)”.

In Article 36(7) for “Article 35(7)” substitute “Article 34(13)”.

In Article 37A(3) for “Article 34(6)” substitute “Article 34(8)”.

In Article 37A at the end add—

“(8) For the purposes of Part II of Schedule 2 as it applies for the calculation of a week’s pay for the purposes of this Article, the calculation date is—

- (a) where the dismissal was with notice, the date on which the employer’s notice was given;
- (b) where sub-paragraph (a) does not apply, the effective date of termination.”.

In Article 42(4) after sub-paragraph (c) insert—

“(ca) remuneration on suspension on maternity grounds under Article 28 of the No. 2 Order;”.

In Article 48 after paragraph (2A) insert—

“(2B) An employee shall be entitled (without making any request and irrespective of whether or not she has been continuously employed for any period) to be provided by her employer with a written statement giving particulars of the reasons for her dismissal if she is dismissed—

- (a) at any time while she is pregnant; or

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(b) after childbirth in circumstances in which her maternity leave period ends by reason of the dismissal.”.

In Article 48(4) for “refused to provide a written statement under paragraph (1)” substitute “failed to provide a written statement under this Article” and for “that paragraph” substitute “this Article”.

In Article 59(2A) for sub-paragraph (a) substitute—

“(a) for authorising the carrying out by an industrial tribunal of a preliminary consideration of any proceedings before it (“a pre-hearing review”); and”.

In Article 59 after paragraph (2C) insert—

“(2D) The regulations may also include provision for authorising an industrial tribunal to hear and determine any issue relating to the entitlement of any party to proceedings to bring or contest the proceedings in advance of the hearing and determination of the proceedings by that or any other industrial tribunal.”.

In Article 59(4)(b) for “confinement” substitute “childbirth”.

In Article 80(2) for “24(3)” substitute “24(5)”, for “34(5B)” substitute “34(7)” and after “56(4),” insert “58A(4),”.

The Industrial Relations (No. 2) (Northern Ireland) Order 1976 (NI 28)

In Article 2(2) after “this Order” insert “, the No. 1 Order and the Act of 1965” and at the appropriate places in alphabetical order insert the following definitions—

“childbirth” means the birth of a living child or the birth of a child whether living or dead after twenty-four weeks of pregnancy;

“expected week of childbirth” means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;

“maternity leave period” shall be construed in accordance with Articles 15 and 16;

“notified day of return” shall be construed in accordance with Article 24(3) and (4);

“notified leave date” shall be construed in accordance with Article 17.

In Article 2 after paragraph (3) insert—

“(3A) For the purposes of Articles 43 to 43D and Article 47 so far as relating to those Articles, the definition of “employee” in Article 2(2) of the No. 1 Order shall have effect with the omission of the words “otherwise than in police service”.

In Article 13(b) for “other employee to resume his original work” substitute “resumption of work by the other employee”.

In Article 49(2) for the words from the beginning to “44” substitute “Articles 3 to 42 and 44”.

In Article 49 after paragraph (3) insert—

“(3A) Articles 43 to 43C do not apply—

(a) in relation to employment during any period when the employee is engaged in work wholly or mainly outside Northern Ireland unless—

(i) the employee ordinarily works in Northern Ireland and the work outside Northern Ireland is for the same employer; or

(ii) the law which governs his contract of employment is the law of Northern Ireland;

(b) 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.”.

In Article 56(2) after “9” insert “, 13A, 27, 28”.

In Article 59(2) at the end add—

“(d) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where the tribunal has jurisdiction in respect of the proceedings by virtue of an order under Article 57.”.

In Article 63(2) for “15(5)” substitute “13D, 15(3), 16(4), 20(3),”.

In Schedule 2 in paragraph 2(1), in the substituted paragraph (3), for the words from “Article 22A(1)” to “Article 14” substitute “Articles 22A to 23 and to Article 29”.

In Schedule 2 in paragraph 2(2) for “Article 28(4)” substitute “Article 22(1)”.

In Schedule 2 in paragraph 2(4) for “Article 34(4), (6) and (7)” substitute “Article 34(4), (8) and (9)”.

In Schedule 2 in paragraph 2(5) for “the original contract of employment” substitute “her contract of employment immediately before the beginning of her maternity leave period”.

In Schedule 2 in paragraph 3(1) for head (c) substitute—

“(c) the reference in section 13(5) of that Act (trial period) to the provisions of the previous contract shall be construed as a reference to the provisions of the contract under which the employee worked immediately before the beginning of her maternity leave period.”.

In Schedule 2 in paragraph 3(4) for “the original contract of employment” substitute “her contract of employment immediately before the beginning of her maternity leave period”.

In Schedule 2 in paragraph 4 for sub-paragraph (1) substitute—

“(1) This paragraph applies where an employee has the right to return to work under Article 20 and either her maternity leave period ends by reason of dismissal or she is dismissed after her maternity leave period.”.

In Schedule 2 in paragraph 4(2) for “during the period of her absence” substitute “after her maternity leave period” and for “paragraph 5” substitute “Article 25”.

In Schedule 2 in paragraph 6 after “return to work” insert “in accordance with Article 23” and for the words from “during her absence” to “confinement” substitute “on a day falling after the commencement of her maternity leave period and before the notified day of return”.

In Schedule 2 in paragraph 7 after “Schedule” insert “and Article 25”.

The Wages (Northern Ireland) Order 1988 (NI 7)

In Article 8(2) for “47(5)(b)” substitute “47(6)(b)”.

In Article 9(1)(c) for “Article 39” substitute “Article 39A”.

In Article 26(1) and (3) for “Parts II and III do” substitute “Part II does”.

The Insolvency (Northern Ireland) Order 1989 (NI 19)

In Schedule 4 in paragraph 13(2)(b) after “1976” insert “or remuneration on suspension on maternity grounds under Article 28 of that Order”.

The Industrial Relations (Northern Ireland) Order 1992 (NI 5)

In Articles 30(7) and 36(6) for “Article 34(5A)” substitute “Article 34(6)”.