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STATUTORY INSTRUMENTS

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**1995 No. 3213**

**The Pensions (Northern Ireland) Order 1995**

**PART II**

**OCCUPATIONAL PENSIONS**

*Employee trustees*

**Time off for performance of duties and for training**

**42.**—(1) The employer in relation to a trust scheme must permit any employee of his who is a trustee of the scheme to take time off during his working hours for the purpose of—

- (a) performing any of his duties as such a trustee, or
- (b) undergoing training relevant to the performance of those duties.

(2) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard in particular to—

- (a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or, as the case may be, for undergoing the particular training, and
- (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

(3) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this Article.

(4) For the purposes of this Article, the working hours of an employee are any time when in accordance with his contract of employment he is required to be at work.

**Payment for time off**

**43.**—(1) An employer who permits an employee to take time off under Article 42 must pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in paragraph (3) are those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under this Article does not affect any right of an employee in relation to remuneration under his contract of employment, but—

- (a) any contractual remuneration paid to an employee in respect of a period of time off to which this Article applies shall go towards discharging any liability of the employer under this Article in respect of that period, and
- (b) any payment under this Article in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to an industrial tribunal that his employer has failed to pay him in accordance with this Article.

### **Time limit for proceedings**

**44.** An industrial tribunal must not consider a complaint under Article 42 or 43 unless it is presented to the tribunal—

- (a) within three months of the date when the failure occurred, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

### **Remedies**

**45.—**(1) Where the tribunal finds a complaint under Article 42 is well-founded, it must make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee.

(2) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

(3) Where on a complaint under Article 43 the tribunal finds that the employer has failed to pay the employee in accordance with that Article, it must order him to pay the amount which it finds to be due.

(4) The remedy of an employee for infringement of the rights conferred on him by Article 42 or 43 is by way of complaint to an industrial tribunal in accordance with this Part, and not otherwise.

### **Right not to suffer detriment in employment or be unfairly dismissed**

**46.—**(1) Subject to paragraph (2), an employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) Paragraph (1) does not apply where the detriment in question amounts to dismissal, except where an employee is dismissed in circumstances in which, by virtue of Article 25 of the No. 1 Order, Article 20 of that Order does not apply to the dismissal.

(3) Articles 13B and 13C of the No. 2 Order (which relate to proceedings brought by an employee on the ground that he has been subjected to a detriment in contravention of Article 13A of that Order) shall have effect as if the reference in Article 13B(1) to Article 13A included a reference to paragraph (1).

(4) In the following provisions—

Article 71 of, and Schedule 4 to, the No. 1 Order (death of employee or employer),

Article 49(2) (except sub-paragraph (b)) of the No. 2 Order (employee ordinarily working outside Northern Ireland), and

Article 56(1) of the No. 2 Order (remedy for infringement of rights conferred by the Order),

any reference to the No. 2 Order, or any provision of that Order, includes a reference to paragraph (1).

(5) The dismissal of an employee by an employer shall be regarded for the purposes of Part III of the No. 1 Order as unfair if the reason (or, if more than one, the principal reason) for it is that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(6) Where the reason or the principal reason for which an employee was selected for dismissal was that he was redundant, but it is shown—

(a) 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 him and who have not been dismissed by the employer, and

(b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in paragraph (5),

then, for the purposes of Part III of the No. 1 Order, the dismissal shall be regarded as unfair.

(7) Article 20 of the No. 1 Order (right of employee not to be unfairly dismissed) applies to a dismissal regarded as unfair by virtue of paragraph (5) or (6) regardless of the period for which the employee has been employed and of his age; and accordingly Article 24(1) of that Order (which provides a qualifying period and an upper age limit) does not apply to such a dismissal.

(8) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Article, or

(b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this Article.

(9) Paragraph (8) does not apply to an agreement to refrain from presenting or continuing with a complaint where—

(a) a conciliation officer has taken action under Article 62(2), (3) or (5) of the No. 1 Order (conciliation), or

(b) the conditions regulating compromise agreements under the No. 2 Order (as set out in Article 59(3) of that Order) are satisfied in relation to the agreement.

(10) In this Article—

“dismissal” has the same meaning as in Part III of the No. 1 Order;

“the No. 1 Order” means the Industrial Relations (Northern Ireland) Order 1976(1);

“the No. 2 Order” means the Industrial Relations (No. 2) (Northern Ireland) Order 1976(2).

(11) Article 2 of the No. 1 Order and Article 2 of the No. 2 Order (general interpretation), have effect for the purposes of this Article as they have effect for the purposes of those Orders.

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(1) 1976 NI 16.

(2) 1976 NI 28.