
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART VI

PROTECTION FROM SUFFERING DETRIMENT ETC. IN EMPLOYMENT

CHAPTER I

RIGHTS NOT TO SUFFER DETRIMENT

[^{F1}Jury service

67M.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the employee—

- (a) has been summoned under the Juries (Northern Ireland) Order 1974 (NI 6) or the Coroners (Northern Ireland) Act 1959 (c.15) to attend for service as a juror, or
- (b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) This Article does not apply where the detriment in question amounts to dismissal within the meaning of Part XI.

(3) For the purposes of this Article, an employee is not to be regarded as having been subjected to a detriment by a failure to pay remuneration in respect of a relevant period unless under his contract of employment he is entitled to be paid that remuneration.

(4) In paragraph (3) “a relevant period” means any period during which the employee is absent from work because of his attendance at any place in pursuance of being summoned as mentioned in paragraph (1)(a).]

F1 2004 NI 19

Health and safety cases

68.—(1) 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—

- (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,

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

[^{F2}(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),]

(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) An employee is not to be regarded as having been subjected to any detriment on the ground specified in paragraph (1)(e) 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 treated him as the employer did.

(4) ^{F3} . . . this Article does not apply where the detriment in question amounts to dismissal (within the meaning of^{F3} Part XI).

F2 SR 1996/511

F3 1999 NI 9

[^{F4}Working time cases

68A.—(1) A worker 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 the worker-

(a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations (Northern Ireland) 1998,

(b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,

(d) being—

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or

(ii) a candidate in an election in which any person elected will, on being elected, be such a representative,
performed (or proposed to perform) any functions or activities as such a representative or candidate,

(e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or

(f) alleged that the employer had infringed such a right.

(2) It is immaterial for the purposes of paragraph (1)(e) or (f)—

(a) whether or not the worker has the right, or

(b) whether or not the right has been infringed,

but, for those provisions 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)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) This Article does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part XI^{F5}. . . .

[
^{F6}(5) A reference in this Article to the Working Time Regulations (Northern Ireland) 1998 includes a reference to

(a)] the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.

[the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.]]
^{F7}(b)

F4 SR 1998/386

F5 1999 NI 9

F6 SI 2003/3049

F7 SI 2004/1713

Trustees of occupational pension schemes

69.—(1) 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 relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) ^{F8}. . . this Article does not apply where the detriment in question amounts to dismissal (within the meaning of^{F8} Part XI)].

[^{F9}(2A) This Article applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).]

(3) 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.

F8 1999 NI 9

F9 1999 NI 11

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Employee representatives

70.—(1) 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) 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,

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

[^{F10}(1A) An employee has the right not to be subjected to any detriment by any act, or by any deliberate failure to act, by his employer done on the ground of his participation in an election of employee representatives for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.]

(2) ^{F11} . . . this Article does not apply where the detriment in question amounts to a dismissal (within the meaning of [^{F11} Part XI]).

F10 SR 1999/432

F11 1999 NI 9

[^{F12} Employees exercising right to time off work for study or training

70A.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer or the principal (within the meaning of Article 91A(3)) done on the ground that, being a person entitled to—

- (a) time off under Article 91A(1) or (3), and
- (b) remuneration under Article 91B(1) in respect of that time taken off,

the employee exercised (or proposed to exercise) that right or received (or sought to receive) such remuneration.

(2) ^{F13} . . . this Article does not apply where the detriment in question amounts to dismissal (within the meaning of [^{F13} Part XI]).]

F12 1998 NI 15

F13 1999 NI 9

[^{F14} Protected disclosures

70B.—(1) A worker 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 the worker has made a protected disclosure.

(2) ^{F15} . . . this Article does not apply where—

- (a) the worker is an employee, and
- (b) the detriment in question amounts to dismissal (within the meaning of [^{F15} Part XI]).

(3) For the purposes of this Article, and of Articles 71 and 72 so far as relating to this Article, “worker”, “worker's contract”, “employment” and “employer” have the extended meaning given by Article 67K.]

- F14 1998 NI 17
- F15 1999 NI 9

[^{F16}**Leave for family and domestic reasons**

70C.—(1) 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 for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Department and which relates to—

- (a) pregnancy, childbirth or maternity,
- (b) ordinary, compulsory or additional maternity leave,
[ordinary or additional adoption leave,]

^{F17}(ba)

- (c) parental leave,
[paternity leave, or]

^{F17}(ca)

- (d) time off under Article 85A.

(3) A reason prescribed under this Article in relation to parental leave may relate to action which an employee takes, agrees to take or refuses to take under or in respect of a collective or workforce agreement.]

- F16 1999 NI 9
- F17 2002 NI 2

.....^{F18}

F18 prosp. in pt. inserted by 2002 c. 21 for the purpose of rights conferred on employees by virtue of regulations under s. 25

[^{F19}**Flexible working**

[^{F20}**70E**].—(1) 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 the employee—

- (a) made (or proposed to make) an application under Article 112F,
- (b) exercised (or proposed to exercise) a right conferred on him under Article 112G,
- (c) brought proceedings against the employer under Article 112H, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

(2) This Article does not apply where the detriment in question amounts to dismissal within the meaning of Part XI.]

- F19 2002 NI 2
- F20 2003 NI 15

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Complaints to industrial tribunals

71.—(1) An employee may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article^[F21 67M,] 68,^[F22 69, 70]^[F23, 70A]^[F24, 70C or]^[F25 70E]]]].

^{[F26(1ZA)} A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 68A.]

^{[F27(1A)} A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 70B.]

^{[F28(1B)} A person may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 70D.]

(2) ^{[F27}On a complaint under this Article] it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, 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.

(4) For the purposes of paragraph (3)—

- (a) where an act extends over a period, the “date of the act” means the last day of that period, and
- (b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

^{[F22(5)} In this Article and Article 72 any reference to the employer includes, where a person complains that he has been subjected to a detriment in contravention of Article 70A, the principal (within the meaning of Article 91A(3)).]

F21 2004 NI 19

F22 1998 NI 15

F23 1999 NI 9

F24 2002 NI 2

F25 2003 NI 15

F26 SR 1998/386

F27 1998 NI 17

F28 Art. 71(1B) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 27, 61, **Sch. 1 para. 2(3)**; S.I. 2002/1727, **art. 2**

Modifications etc. (not altering text)

C1 Art. 71 applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 13(3)** (with reg. 50)

C2 Art. 71(2)-(4) applied (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 8(2)**

C3 Art. 71(2)-(14) applied (18.8.2006) by virtue of European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 2, 34(2), **Sch. 3 para. 22**

- C4** Art. 71(2)-(4) applied (with modifications) (prosp.) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 56, 118(1) (with s. 73)
- C5** Art. 71(2)-(4) applied (with modifications) (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), reg. 32(2) (with reg. 39)

Remedies

72.—(1) Where an industrial tribunal finds a complaint under Article 71 well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

(2) [^{F29}Subject to [^{F30} paragraphs (5A) and (6)],] the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement to which the complaint relates, and
- (b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

(3) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates, and
- (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss 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) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

[^{F30}(5A) Where—

- (a) the complaint is made under Article 71(1ZA),
- (b) the detriment to which the worker is subjected is the termination of his worker's contract, and
- (c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part XI if the worker had been an employee and had been dismissed for the reason specified in Article 132A.]

[^{F29}(6) Where—

- (a) the complaint is made under Article 71(1A),
- (b) the detriment to which the worker is subject is the termination of his worker's contract, and
- (c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part XI if the worker had been an employee and had been dismissed for the reason specified in Article 134A.]

[^{F31}(7) Where—

- (a) the complaint is made under Article 71(1B) by a person who is not an employee, and

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(b) the detriment to which he is subjected is the termination of his contract with the person who is his employer for the purposes of section 25 of the Tax Credits Act 2002, any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 11 if the complainant had been an employee and had been dismissed for the reason specified in Article 135B.]

- F29** 1998 NI 17
F30 SR 1998/386
F31 Art. 72(7) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 27, 61, **Sch. 1 para. 2(4)**; S.I. 2002/1727, **art. 2**

Modifications etc. (not altering text)

- C6** Art. 72 applied (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 8(2)**
C7 Art. 72 applied (with modifications) (prosp.) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 56, 118(1)** (with s. 73)
C8 Art. 72(1)-(5) applied (18.8.2006) by European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 2, 34(3), **Sch. 3 para. 22**
C9 Art. 72(1)-(5) applied (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 51(2), **Sch. 2 paras. 10, 20**
C10 Art. 72(1)-(5) applied (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 32(3)** (with reg. 39)

[^{F32}**Application to police of Article 68 and related provisions**

72A.—(1) For the purposes of Article 68, and of Articles 71 and 72 so far as relating to that Article, the holding, otherwise than under a contract of employment, of the office of constable -shall be treated as employment by the relevant officer under a contract of employment.

(2) In this Article “the relevant officer”

[in relation to a police officer, means the Chief Constable;]

^{F33}(a)

^{F34}(b) in relation to a person holding office under section 9(1)(b) of the Police Act 1997 (police members of the National Criminal Intelligence Service) means the Director General of the National Criminal Intelligence Service; and

(c) in relation to any other person holding the office of constable, means the person who has the direction and control of the body of constables in question.]

- F32** 1997 NI 16
F33 2000 c. 32
F34 prosp. rep. by 2005 c. 15

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