STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XI

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

[F1 Other Dismissals]

F1 Arts. 130ZA-130ZH and crossheadings preceding and following said arts. inserted (1.10.2006) by The Employment Equality (Age) Regulations (Northern Ireland) (S.R. 2006/261), regs. 1(1), 53(1), {Sch. 7 para. 3(4)}

[F2X1 Procedural fairness

130A.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) one of the procedures set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003 (dismissal and disciplinary procedures) applies in relation to the dismissal,

(b) the procedure has not been completed, and

(c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.

(2) Subject to paragraph (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of Article 130(4)(a) as by itself making the employer's action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.

(3) For the purposes of this Article, any question as to the application of a procedure set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003, completion of such a procedure or failure to comply with the requirements of such a procedure shall be determined by reference to regulations under Article 17 of that Order.**]**

Editorial Information

X1 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F2 2003 NI 15

[[F3X2]Jury service

130B.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) has been summoned under the Juries (Northern Ireland) Order 1974 or the Coroners Act (Northern Ireland) 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) Paragraph (1) does not apply in relation to an employee who is dismissed if the employer shows—

(a) that the circumstances were such that the employee's absence in pursuance of being so summoned was likely to cause substantial injury to the employer's undertaking,

(b) that the employer brought those circumstances to the attention of the employee,

(c) that the employee refused or failed to apply to be excused from attending in pursuance of being so summoned, and

(d) that the refusal or failure was not reasonable**]**

Editorial Information

X2 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F3 2004 NI 19

[[F4X3]Leave for family reasons

131.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is of a prescribed kind, or

(b) the dismissal takes place in prescribed circumstances.

(2) In this Article “prescribed” means prescribed by regulations made by the Department.

(3) A reason or set of circumstances prescribed under this Article must relate to—

(a) pregnancy, childbirth or maternity,

(b) ordinary, compulsory or additional maternity leave,

[F5(ba) **[** ordinary or additional adoption leave,**]**

(c) parental leave,

[F5(ca) **[** paternity leave, or**]**

(d) time off under Article 85A;

and it may also relate to redundancy or other factors.

(4) A reason or set of circumstances prescribed under paragraph (1) satisfies paragraph (3)(c) if it relates to action which an employee—

(a) takes,

(b) agrees to take, or

(c) refuses to take,

under or in respect of a collective or workforce agreement which deals with parental leave.

(5) Regulations under this Article may apply any statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this Article**]**

Editorial Information

X3 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F4 1999 NI 9

F5 2002 NI 2

[X4]Health and safety cases

132.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is 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,

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

[[F6](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 representives of employees 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) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in paragraph (1)(e), he shall not be regarded as unfairly dismissed 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 dismissed him for taking (or proposing to take) them.

Editorial Information

X4 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F6 SR 1996/511

[F7X5Working time cases

132A.—[F8(1)] An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(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, or

(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.

[F8(2)] A reference in this Article to the Working Time Regulations (Northern Ireland) 1998 includes a reference to

[F9(a)] the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.

[F9(b)] the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 **[F10**; and

(c) the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008.**]]]]**

Editorial Information

X5 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F7 SR 1998/386

F8 SI 2003/3049

F9 SI 2004/1713

F10 Art. 132A(2)(c) and preceding word inserted (1.10.2008) by Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (S.R. 2008/315), reg. 19, **Sch. 3 para. 2(3)**

[X6]Trustees of occupational pension schemes

133.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is 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.

[[F11](1A) 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).**]**

(2) 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.

Editorial Information

X6 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F11 1999 NI 11

[X7]Employee representatives

134.—**[**[F12](1)**]** An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee, being—

(a) an employee representative for the purposes of Part XIII of this Order or**[**[F13]regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006**]**[F14]or regulations 9, 13 and 15 of the Service Provision Change (Protection of Employment) Regulations 2006**]**, or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

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

[[F12](2) An employee who is dismissed shall be reguarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee took part in an election of employee representatives for the purposes of Part XIII of this Order or **[**[F15]regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006**][**[F16]or regulations 9, 13 and 15 of the Service Provision Change (Protection of Employment) Regulations 2006**].]**

Editorial Information

X7 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F12 SR 1999/432

F13 Words in art. 134(1)(a) substituted (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), reg. 20(3), **Sch. 2 para. 11(c)** (with reg. 21(1), Sch. 1 para. 3)

F14 Words in art. 134(1)(a) inserted (6.4.2006) by Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (S.R. 2006/177), reg. 20(1), **Sch. 1 para. 2(c)**

F15 Words in art. 134(2) substituted (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), reg. 20(3), **Sch. 2 para. 11(c)** (with reg. 21(1), Sch. 1 para. 3)

F16 Words in art. 134(2) inserted (6.4.2006) by Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (S.R. 2006/177), reg. 20(1), **Sch. 1 para. 2(c)**

[[F17X8]**Protected disclosure**

134A. An employee who is dismissed shall be reguarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.**]**

Editorial Information

X8 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F17 1998 NI 17

[X9]**Assertion of statutory right**

135.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

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

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

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

but, for that paragraph 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) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) The following are relevant statutory rights for the purposes of this Article—

(a) any right conferred by this Order**[**[F18] or Schedule 2 to the Shops (Sunday Trading & c.) (Northern Ireland) Order 1997**][**[F19] or Schedule 8A to the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985**]** for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal,

(b) the right conferred by Article 118 of this Order,[F20]. . .

(c) the rights conferred by Articles 35 and 60 of the Trade Union and Labour Relations Order (deductions from pay)[F21]. . .

[[F22](d) the rights conferred by the Working Time Regulations (Northern Ireland) 1998, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003 **[**[F23], the Fishing Vessels (Working Time: Sea-fisherman) Regulations 2004 or the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008**].][**[F24], and

(e) the rights conferred by the Transfer of Undertakings (Protection of Employment) Regulations 2006.**]**

[[F25](5) In this Article any reference to an employer includes, where the right in question is conferred by Article 91A, the principal (within the meaning of Article 91A(3)).**]**

Editorial Information

X9 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F18 1997 NI 20

F19 1985 NI 11 as inserted by 2004 NI 1

F20 SR 1998/386

F21 Word in art. 135(4)(c) omitted (6.4.2006) by virtue of Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), **19(a)**, Sch. 1 para. 11 (with reg. 21(1), Sch. 1 para. 3)

F22 SI 2004/1713

F23 Words in art. 135(4)(d) substituted (1.10.2008) by Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (S.R. 2008/315), reg. 19, **Sch. 3 para. 2(4)**

F24 Art. 135(4)(e) and preceding words inserted (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), **19(b)**, Sch. 1 para. 11 (with reg. 21(1), Sch. 1 para. 3)

F25 1998 NI 15

[[F26X10]**The national minimum wage**

135A.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies; or

(b) the employer was prosecuted for an offence under section 31 of the National Minimum Wage Act 1998 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies; or

(c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.

(2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—

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

(b) whether or not the right has been infringed; but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

(3) The following are the rights to which this Article applies—

(a) any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an industrial tribunal, and

(b) any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration).**]**

Editorial Information

X10 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F26 1998 c. 39

[[F27X11F28]Tax credit

135B.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 6(2)(a) or (c) of the Tax Credits Act 1999;

(b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under section 9 of that Act, as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right; or

(c) the employee is entitled, or will or may be entitled, to working families' tax credit or disabled person's tax credit.

(2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—

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

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

but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.**]**

Editorial Information

X11 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure

of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F27 1999 c. 10

F28 prosp. in pt. subst. by 2002 c. 21 for the purpose of rights conferred on employees by virtue of regulations under s. 25

[F29X12Flexible working

135C. An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is 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.**]**

Editorial Information

X12 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F29 2002 NI 2

VALID FROM 30/06/2012

[F30Pension enrolment

135D.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the employee a requirement to which this Article applies;

(b) the employer was prosecuted for an offence under section 45 of the Pensions (No. 2) Act (Northern Ireland) 2008 as a result of action taken for the purposes of enforcing in favour of the employee a requirement to which this Article applies; or

(c) any provision of Chapter 1 of that Part of that Act applies to the employee, or will or might apply.

(2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—

(a) whether or not the requirement applies in favour of the employee, or

(b) whether or not the requirement has been contravened,

but, for that paragraph to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.

(3) This Article applies to any requirement imposed on the employer by or under any provision of Chapter 1 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008.

(4) In this Article references to enforcing a requirement include references to securing its benefit in any way.**]**

F30 Art. 135D inserted (30.6.2012) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 57(2)**, 118(1) (with s. 73); S.R. 2012/266, art. 2(b), Sch. Pt. 2

[X13]Trade union membership or activities

136.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for his dismissal is that the employee—

(a) was, or proposed to become, a member of an independent trade union,[F31]. . .

(b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time,[F31]. . .

[[F31](ba) had made use, or proposed to make use, of trade union services at an appropriate time,

(bb) had failed to accept an offer made in contravention of Article 77A or 77B, or**]**

(c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

(2) In paragraph**[**[F31] (1)**]** "an appropriate time" means—

(a) a time outside the employee's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union**[**[F31] or (as the case may be) make use of trade union services**]**;

and for this purpose "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

[[F31](2A) In this Article—

(a) "trade union services" means services made available to the employee by an independent trade union by virtue of his membership of the union, and

(b) references to an employee's "making use" of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(2B) Where the reason or one of the reasons for the dismissal was that an independent trade union (with or without the employee's consent) raised a matter on behalf of the employee as one of its members, the reason shall be treated as falling within paragraph (1)(ba).**]**

(3) Where the reason, or one of the reasons, for the dismissal was —

(a) the employee's refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments, or

(b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in sub-paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

the reason shall be treated as falling within paragraph (1)(c).

(4) References in this Article to being or becoming a member of a trade union include references to being or becoming a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union[F31]. . . .

[[F31](5) References in this Article—

(a) to taking part in the activities of a trade union, and

(b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (4).**]**

Editorial Information

X13 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F31 2004 NI 19

[X14]Redundancy

137.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,

(b) 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

[[F32F33](c) it is shown that any of paragraphs (2A) to (**[**[F34]7H**]**) apply.**]**

Para. (2) rep. by 1999 NI 9

[[F35](2A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 130B (unless the case is one to which paragraph (2) of that Article applies).**]**

(3) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article).

[[F36](3A) This paragraph applies if 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 132A.**]**

(4) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 133(1).

(5) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 134.

[[F37](5A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 134A.**]**

(6) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article).

[[F38](6A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135A (read with paragraph (2) of that Article).**]**

[[F39F40](6B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135B (read with paragraph (2) of that Article).**]**

[[F35](6C) This paragraph applies if 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 135C.**]**

(7) This paragraph applies if 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 136(1) (read with paragraph (3) of that Article).

[[F41](7A) This paragraph applies if—

(a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the reason mentioned in Article 144A (participation in official industrial action), and

(b) paragraph (3), (4) or (5) of that Article applies to the dismissal.**]**

[[F42](7B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation).**]**

[[F43](7C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 (unless the case is one to which paragraph (4) of that regulation applies).**]**

[[F44](7D) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 (unless the case is one to which paragraph (4) of that regulation applies).**]**

[[F45](7E) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (read with paragraphs (4) and (7) of that regulation).**]**

[[F46](7F) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (read with paragraphs (4) and (7) of that regulation).**]**

[[F47](7G) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (read with paragraph 5(6) of that Schedule).**]**

[[F48]**[**
[F49](7H)**]** This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation)**]**

[[F50](7H) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in regulation 46 or 47 of the Companies (Cross-Border Mergers) Regulations 2007.**]**

[[F51](7I) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that he—

(a) exercised or sought to exercise his right to be accompanied in accordance with paragraph 9 of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006, or

(b) accompanied or sought to accompany an employee pursuant to a request under that paragraph.**]**

(8) In this Part "redundancy case" means a case where sub-paragraphs (a) and (b) of paragraph (1) of this Article are satisfied.

Editorial Information

X14 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F32 Art. 137(1)(c) substituted (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 6(2)(a)**

F33 By European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **regs. 2(2)**, 32(1)(a) (in their application in relation to Northern Ireland subject to the modifications in {Sch. 3 para. 11}) it is provided (18.8.2006) that in art. 137(1)(c) for "7F" there be substituted "7G"

F34 Words in art. 137(1)(c) substituted (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 48(1)(a), **Sch. 2 para. 8**

F35 2004 NI 19

F36 SR 1998/386

F37 1998 NI 17

F38 1998 c. 39

F39 1999 c. 10

F40 Art. 137(6B) insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 27, 61, **Sch. 1 para. 4(3)**; S.I. 2002/1727, **art. 2**

F41 1999 NI 9

F42 SI 1999/3323

F43 SR 2000/219

F44 SR 2002/298

F45 SR 2004/417

F46 SR 2005/47

F47 Art. 137(7G) inserted (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 6(2)(b)**

F48 Art. 137(7G) inserted (18.8.2006) by virtue of European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **regs. 2(2)**, 32(1)(b) (in their application in relation to Northern Ireland subject to the modifications in {Sch. 3 para. 11})

F49 Art. 137(7G) renumbered (6.4.2007) as art. 137(7H) by Employment Equality (Age) (Consequential Amendments) Regulations (Northern Ireland) 2007 (S.R. 2007/225), **reg. 3(2)(a)**

F50 Art. 137(7H) inserted (15.12.2007) by virtue of Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 48(1)(b), **Sch. 2 para. 8**

F51 Art. 137(7I) inserted (6.4.2007) by Employment Equality (Age) (Consequential Amendments) Regulations (Northern Ireland) 2007 (S.R. 2007/225), **reg. 3(2)(b)**

[X15]Replacements

138.—(1) Where this Article applies to an employee he shall be regarded for the purposes of Article 130(1)(b) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) This Article applies to an employee where—

(a) on engaging him the employer informs him in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth,**[**[F52] or on adoption leave**]** and

(b) the employer dismisses him in order to make it possible to give work to the other employee.

(3) This Article also applies to an employee where—

(a) on engaging him the employer informs him in writing that his employment will be terminated on the end of a suspension of another employee from work on medical grounds or maternity grounds (within the meaning of Part VIII), and

(b) the employer dismisses him in order to make it possible to allow the resumption of work by the other employee.

(4) Paragraph (1) does not affect the operation of Article 130(4) in a case to which this Article applies.

Editorial Information

X15 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F52 2002 NI 2

[X16]Pressure on employer to dismiss unfairly

139.—(1) This Article applies where there falls to be determined for the purposes of this Part a question—

(a) as to the reason, or principal reason, for which an employee was dismissed,

(b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of Article 130(1)(b), or

(c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing him.

(2) In determining the question no account shall be taken of any pressure which by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee; and the question shall be determined as if no such pressure had been exercised.

Editorial Information

X16 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

Status:
Point in time view as at 01/10/2008. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:
The Employment Rights (Northern Ireland) Order 1996, Cross Heading: Other Dismissals is up to date with all changes known to be in force on or before 20 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.