STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XII

REDUNDANCY PAYMENTS ETC.

CHAPTER I

RIGHT TO REDUNDANCY PAYMENT

The right

170.—(1) An employer shall pay a redundancy payment to any employee of his if the employee—

(a) is dismissed by the employer by reason of redundancy, or

(b) is eligible for a redundancy payment by reason of being laid off or kept on short-time.

(2) Paragraph (1) has effect subject to the following provisions of this Part (including, in particular, Articles 175 to 179, 184 to 187, 190 to 196 and 199).

CHAPTER II

RIGHT ON DISMISSAL BY REASON OF REDUNDANCY

Dismissal by reason of redundancy

Circumstances in which an employee is dismissed

171.—(1) Subject to the provisions of this Article and Articles 172 and 173, for the purposes of this Part an employee is dismissed by his employer if (and only if)—

(a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),

[[F1](b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed, or**]**

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) Paragraph (1)(c) does not apply if the employee terminates the contract without notice in circumstances in which he is entitled to do so by reason of a lock-out by the employer.

(3) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the obligatory period of notice the employee gives notice in writing to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire.

(4) In this Part the "obligatory period of notice", in relation to notice given by an employer to terminate an employee's contract of employment, means—

(a) the actual period of the notice in a case where the period beginning at the time when the notice is given and ending at the time when it expires is equal to the minimum period which (by virtue of any statutory provision or otherwise) is required to be given by the employer to terminate the contract of employment, and

(b) the period which—

(i) is equal to the minimum period referred to in sub-paragraph (a), and

(ii) ends at the time when the notice expires,

in any other case.

(5) Where in accordance with any statutory provision or rule of law —

(a) an act on the part of an employer, or

(b) an event affecting an employer (including, in the case of an individual, his death),

operates to terminate a contract under which an employee is employed by him, the act or event shall be taken for the purposes of this Part to be a termination of the contract by the employer.

F1 SR 2002/298

Art. 172 rep. by 1999 NI 9

No dismissal in cases of renewal of contract or re-engagement

173.—(1) Where—

(a) an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made before the end of his employment under the previous contract, and

(b) the renewal or re-engagement takes effect either immediately on, or after an interval of not more than four weeks after, the end of that employment,

the employee shall not be regarded for the purposes of this Part as dismissed by his employer by reason of the ending of his employment under the previous contract.

(2) Paragraph (1) does not apply if—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee is employed, and

(ii) the other terms and conditions of his employment,

differ (wholly or in part) from the corresponding provisions of the previous contract, and

(b) during the period specified in paragraph (3)—

(i) the employee (for whatever reason) terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated, or

(ii) the employer, for a reason connected with or arising out of any difference between the renewed or new contract and the previous contract, terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated.

(3) The period referred to in paragraph (2)(b) is the period—

(a) beginning at the end of the employee's employment under the previous contract, and

(b) ending with—

(i) the period of four weeks beginning with the date on which the employee starts work under the renewed or new contract, or

(ii) such longer period as may be agreed in accordance with paragraph (6) for the purpose of retraining the employee for employment under that contract;

and is in this Part referred to as the "trial period".

(4) Where paragraph (2) applies, for the purposes of this Part—

(a) the employee shall be regarded as dismissed on the date on which his employment under the previous contract (or, if there has been more than one trial, period, the original contract) ended, and

(b) the reason for the dismissal shall be taken to be the reason for which the employee was then dismissed, or would have been dismissed had the offer (or original offer) of renewed or new employment not been made, or the reason which resulted in that offer being made.

(5) Paragraph (2) does not apply if the employee's contract of employment is again renewed, or he is again re-engaged under a new contract of employment, in circumstances such that paragraph (1) again applies.

(6) For the purposes of paragraph (3)(b)(ii) a period of retraining is agreed in accordance with this paragraph only if the agreement—

(a) is made between the employer and the employee or his representative before the employee starts work under the contract as renewed, or the new contract,

(b) is in writing,

(c) specifies the date on which the period of retraining ends, and

(d) specifies the terms and conditions of employment which will apply in the employee's case after the end of that period.

Redundancy

174.—(1) For the purposes of this Order an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

(2) For the purposes of paragraph (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in sub-paragraphs (a) and (b) of that paragraph would be satisfied without so treating them).

(3) Where—

(a) the contract under which a person is employed is treated by Article 171(5) as terminated by his employer by reason of an act or event, and

(b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment,

he shall be taken for the purposes of this Order to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in sub-paragraphs (a) and (b) of paragraph (1).

(4) In its application to a case within paragraph (3), sub-paragraph (a)(i) of paragraph (1) has effect as if the reference in that paragraph to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.

(5) In paragraph (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

Exclusions

Summary dismissal

175.—(1) Subject to paragraphs (2) and (3), an employee is not entitled to a redundancy payment by reason of dismissal where his employer, being entitled to terminate his contract of employment without notice by reason of the employee's conduct, terminates it either—

(a) without notice,

(b) by giving shorter notice than that which, in the absence of conduct entitling the employer to terminate the contract without notice, the employer would be required to give to terminate the contract, or

(c) by giving notice which includes, or is accompanied by, a statement in writing that the employer would, by reason of the employee's conduct, be entitled to terminate the contract without notice.

(2) Where an employee who—

(a) has been given notice by his employer to terminate his contract of employment, or

(b) has given notice to his employer under Article 183(1) indicating his intention to claim a redundancy payment in respect of lay-off or short-time,

takes part in a strike at any relevant time in circumstances which entitle the employer to treat the contract of employment as terminable without notice, paragraph (1) does not apply if the employer terminates the contract by reason of his taking part in the strike.

(3) Where the contract of employment of an employee who—

(a) has been given notice by his employer to terminate his contract of employment, or

(b) has given notice to his employer under Article 183(1) indicating his intention to claim a redundancy payment in respect of lay-off or short-time,

is terminated as mentioned in paragraph (1) at any relevant time otherwise than by reason of his taking part in a strike, an industrial tribunal may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal, in the circumstances of the case, to be just and equitable that the employee should receive it.

(4) In paragraph (3) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from paragraph (1), or

(b) such part of that redundancy payment as the tribunal thinks fit.

(5) In this Article "relevant time"

(a) in the case of an employee who has been given notice by his employer to terminate his contract of employment, means any time within the obligatory period of notice, and

(b) in the case of an employee who has given notice to his employer under Article 183(1), means any time after the service of the notice.

Renewal of contract or re-engagement

176.—(1) This Article applies where an offer (whether in writing or not) is made to an employee before the end of his employment—

(a) to renew his contract of employment, or

(b) to re-engage him under a new contract of employment,

with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.

(2) Where paragraph (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.

(3) This paragraph is satisfied where—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee would be employed, and

(ii) the other terms and conditions of his employment,

would not differ from the corresponding provisions of the previous contract, or

(b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.

(4) The employee is not entitled to a redundancy payment if—

(a) his contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of the offer,

(b) the provisions of the contract as renewed or new contract as to the capacity or place in which he is employed or the other terms and conditions of his employment differ (wholly or in part) from the corresponding provisions of the previous contract.

(c) the employment is suitable in relation to him, and

(d) during the trial period he unreasonably terminates the contract, or unreasonably gives notice to terminate it and it is in consequence terminated.

Employee anticipating expiry of employer's notice

177.—(1) Subject to paragraph (3), an employee is not entitled to a redundancy payment where—

(a) he is taken to be dismissed by virtue of Article 171(3) by reason of giving to his employer notice terminating his contract of employment on a date earlier than the date on which notice by the employer terminating the contract is due to expire,

(b) before the employee's notice is due to expire, the employer gives him a notice such as is specified in paragraph (2), and

(c) the employee does not comply with the requirements of that notice.

(2) The employer's notice referred to in paragraph (1)(b) is a notice in writing—

(a) requiring the employee to withdraw his notice terminating the contract of employment and to continue in employment until the date on which the employer's notice terminating the contract expires, and

(b) stating that, unless he does so, the employer will contest any liability to pay to him a redundancy payment in respect of the termination of his contract of employment.

(3) An industrial tribunal may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal, having regard to—

(a) the reasons for which the employee seeks to leave the employment, and

(b) the reasons for which the employer requires him to continue in it,

to be just and equitable that the employee should receive the payment.

(4) In paragraph (3) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from paragraph (1), or

(b) such part of that redundancy payment as the tribunal thinks fit.

Strike during currency of employer's notice

178.—(1) This Article applies where—

(a) an employer has given notice to an employee to terminate his contract of employment ("notice of termination"),

(b) after the notice is given the employee begins to take part in a strike of employees of the employer, and

(c) the employer serves on the employee a notice of extension.

(2) A notice of extension is a notice in writing which—

(a) requests the employee to agree to extend the contract of employment beyond the time of expiry by a period comprising as many available days as the number of working days lost by striking ("the proposed period of extension"),

(b) indicates the reasons for which the employer makes that request, and

(c) states that the employer will contest any liability to pay the employee a redundancy payment in respect of the dismissal effected by the notice of termination unless either—

(i) the employee complies with the request, or

(ii) the employer is satisfied that, in consequence of sickness or injury or otherwise, the employee is unable to comply with it or that (even though he is able to comply with it) it is reasonable in the circumstances for him not to do so.

(3) Subject to paragraphs (4) and (5), if the employee does not comply with the request contained in the notice of extension, he is not entitled to a redundancy payment by reason of the dismissal effected by the notice of termination.

(4) Paragraph (3) does not apply if the employer agrees to pay a redundancy payment to the employee in respect of the dismissal effected by the notice of termination even though he has not complied with the request contained in the notice of extension.

(5) An industrial tribunal may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal that—

(a) the employee has not complied with the request contained in the notice of extension and the employer has not agreed to pay a redundancy payment in respect of the dismissal effected by the notice of termination, but

(b) either the employee was unable to comply with the request by it was reasonable in the circumstances for him not to comply with it.

(6) In paragraph (5) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from paragraph (3), or

(b) such part of that redundancy payment as the tribunal thinks fit.

(7) If the employee—

(a) complies with the request contained in the notice of extension, or

(b) does not comply with it but attends at his proper or usual place of work and is ready and willing to work on one or more (but not all) of the available days within the proposed period of extension,

the notice of termination has effect, and shall be deemed at all material times to have had effect, as if the period specified in it had been appropriately extended; and Articles 119 to 123 accordingly apply as if the period of notice required by Article 118 were extended to a corresponding extent.

(8) In paragraph (7) "appropriately extended" means—

(a) in a case within sub-paragraph (a) of that paragraph, extended beyond the time of expiry by an additional period equal to the proposed period of extension, and

(b) in a case within sub-paragraph (b) of that paragraph, extended beyond the time of expiry up to the end of the day (or last of the days) on which he attends at his proper or usual place of work and is ready and willing to work.

Provisions supplementary to Article 178

179.—(1) For the purposes of Article 178 an employee complies with the request contained in a notice of extension if, but only if, on each available day within the proposed period of extension, he—

(a) attends at his proper or usual place of work, and

(b) is ready and willing to work,

whether or not he has signified his agreement to the request in any other way.

(2) The reference in Article 178(2) to the number of working days lost by striking is a reference to the number of working days in the period—

(a) beginning with the date of service of the notice of termination, and

(b) ending with the time of expiry,

which are days on which the employee in question takes part in a strike of employees of his employer.

(3) In Article 178 and this Article—

"available day", in relation to an employee, means a working day beginning at or after the time of expiry which is a day on which he is not taking part in a strike of employees of the employer,

"available day within the proposed period of extension" means an available day which begins before the end of the proposed period of extension,

"time of expiry", in relation to a notice of termination, means the time at which the notice would expire apart from Article 178, and

"working day", in relation to an employee, means a day on which, in accordance with his contract of employment, he is normally required to work.

(4) Neither the service of a notice of extension nor any extension by virtue of Article 178(7) of the period specified in a notice of termination affects—

(a) any right either of the employer or of the employee to terminate the contract of employment (whether before, at or after the time of expiry) by a further notice or without notice, or

(b) the operation of this Part in relation to any such termination of the contract of employment.

Supplementary

The relevant date

180.—(1) For the purposes of the provisions of this Order relating to redundancy payments "the relevant date" in relation to the dismissal of an employee has the meaning given by this Article.

(2) Subject to the following provisions of this Article, "the relevant date"

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

[[F2](c) in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed, means the date on which the termination takes effect.**]**

(3) Where the employee is taken to be dismissed by virtue of Article 171(3) the "relevant date" means the date on which the employee's notice to terminate his contract of employment expires.

(4) Where the employee is regarded by virtue of Article 173(4) as having been dismissed on the date on which his employment under an earlier contract ended, "the relevant date" means—

(a) for the purposes of Article 199(1), the date which is the relevant date as defined by paragraph (2) in relation to the renewed or new contract or, where there has been more than one trial period, the last such contract, and

(b) for the purposes of any other provision, the date which is the relevant date as defined by paragraph (2) in relation to the previous contract or, where there has been more than one such trial period, the original contract.

(5) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by Article 118 to be given by an employer would, if duly given on the material date, expire on a date later than the relevant date (as defined by the previous provisions of this Article),

for the purposes of Articles 23(3), 190 and 197(1) the later date is the relevant date.

(6) In paragraph (5)(b) "the material date" means—

(a) the date when notice of termination was given by the employer, or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

Para. (7) rep. by 1999 NI 9

F2 SR 2002/298

Provisions supplementing Articles 173 and 176

181 [F3]**.**—(1) In Articles 173 and 176—

(a) references to re-engagement are to re-engagement by the employer or an associated employer, and

(b) references to an offer are to an offer made by the employer or an associated employer.

(2) For the purposes of the application of Article 173(1) or 176(1) to a contract under which the employment ends on a Friday, Saturday or Sunday—

(a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous contract if it takes effect on or before the next Monday after that Friday, Saturday or Sunday, and

(b) the interval of four weeks to which those provisions refer shall be calculated as if the employment had ended on that next Monday.

Para. (3) rep. by 1999 NI 9

F3 mod. by SR 1999/409

CHAPTER III

RIGHT BY REASON OF LAY-OFF OR SHORT-TIME

Lay-off and short-time

Meaning of "lay-off" and "short-time"

182.—(1) For the purposes of this Part an employee shall be taken to be laid off for a week if—

(a) he is employed under a contract on terms and conditions such that his remuneration under the contract depends on his being provided by the employer with work of the kind which he is employed to do, but

(b) he is not entitled to any remuneration under the contract in respect of the week because the employer does not provide such work for him.

(2) For the purposes of this Part an employee shall be taken to be kept on short-time for a week if by reason of a diminution in the work provided for the employee by his employer (being work of a kind which under his contract the employee is employed to do) the employee's remuneration for the week is less than half a week's pay.

Eligibility by reason of lay-off or short-time

183.—(1) Subject to the following provisions of this Part, for the purposes of this Part an employee is eligible for a redundancy payment by reason of being laid off or kept on short-time if—

(a) he gives notice in writing to his employer indicating (in whatever terms) his intention to claim a redundancy payment in respect of lay-off or short-time (referred to in this Part as "notice of intention to claim"), and —

(b) before the service of the notice he has been laid off or kept on short-time in circumstances in which paragraph (2) applies.

(2) This paragraph applies if the employee has been laid off or kept on short-time—

(a) for four or more consecutive weeks of which the last before the service of the notice ended on, or not more than four weeks before, the date of service of the notice, or

(b) for a series of six or more weeks (of which not more than three were consecutive) within a period of thirteen weeks, where the last week of the series before the service of the notice ended on, or not more than four weeks before, the date of service of the notice.

Exclusions

Counter-notices

184. Where an employee gives to his employer notice of intention to claim but—

(a) the employer gives to the employee, within seven days after the service of that notice, notice in writing (referred to in this Part as a "counter-notice") that he will contest any liability to pay to the employee a redundancy payment in pursuance of the employee's notice, and

(b) the employer does not withdraw the counter-notice by a subsequent notice in writing,

the employee is not entitled to a redundancy payment in pursuance of his notice of intention to claim except in accordance with a decision of an industrial tribunal.

Resignation

185.—(1) An employee is not entitled to a redundancy payment by reason of being laid off or kept on short-time unless he terminates his contract of employment by giving such period of notice as is required for the purposes of this Article before the end of the relevant period.

(2) The period of notice required for the purposes of this Article—

(a) where the employee is required by his contract of employment to give more than one week's notice to terminate the contract, is the minimum period which he is required to give, and

(b) otherwise, is one week.

(3) In paragraph (1) "the relevant period"

(a) if the employer does not give a counter-notice within seven days after the service of the notice of intention to claim, is three weeks after the end of those seven days,

(b) if the employer gives a counter-notice within that period of seven days but withdraws it by a subsequent notice in writing, is three weeks after the service of the notice of withdrawal, and

(c) if—

(i) the employer gives a counter-notice within that period of seven days, and does not so withdraw it, and

(ii) a question as to the right of the employee to a redundancy payment in pursuance of the notice of intention to claim is referred to an industrial tribunal,

is three weeks after the tribunal has notified to the employee its decision on that reference.

(4) For the purposes of paragraph (3)(c) no account shall be taken o f —

(a) any appeal against the decision of the tribunal, or

(b) any proceedings or decision in consequence of any such appeal.

Dismissal

186.—(1) An employee is not entitled to a redundancy payment by reason of being laid off or kept on short-time if he is dismissed by his employer.

(2) Paragraph (1) does not prejudice any right of the employee to a redundancy payment in respect of the dismissal.

Likelihood of full employment

187.—(1) An employee is not entitled to a redundancy payment in pursuance of a notice of intention to claim if—

(a) on the date of service of the notice it was reasonably to be expected that the employee (if he continued to be employed by the same employer) would, not later than four weeks after

that date, enter on a period of employment of not less than thirteen weeks during which he would not be laid off or kept on short-time for any week, and

(b) the employer gives a counter-notice to the employee within seven days after the service of the notice of intention to claim.

(2) Paragraph (1) does not apply where the employee—

(a) continues or has continued, during the next four weeks after the date of service of the notice of intention to claim, to be employed by the same employer, and

(b) is or has been laid off or kept on short-time for each of those weeks.

Supplementary

The relevant date

188.—(1) For the purposes of the provisions of this Order relating to redundancy payments "the relevant date" in relation to a notice of intention to claim or a right to a redundancy payment in pursuance of such a notice—

(a) in a case falling within sub-paragraph (a) of paragraph (2) of Article 183, means the date on which the last of the four or

(b) more consecutive weeks before the service of the notice came to an end, and in a case falling within sub-paragraph (b) of that paragraph, means the date on which the last of the series of six or more weeks before the service of the notice came to an end.

Provisions supplementing Articles 183 and 187

189. For the purposes of Articles 183(2) and 187(2)—

(a) it is immaterial whether a series of weeks consists wholly of weeks for which the employee is laid off or wholly of weeks for which he is kept on short-time or partly of the one and partly of the other, and

(b) no account shall be taken of any week for which an employee is laid off or kept on short-time where the lay-off or short-time is wholly or mainly attributable to a strike or a lock-out (whether or not in the trade or industry in which the employee is employed and whether in Northern Ireland or elsewhere).

CHAPTER IV

GENERAL EXCLUSIONS FROM RIGHT

Qualifying period of employment

190 [F4]**.** An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.

F4 mod. by SR 1999/409

Upper age limit

191. [F5] . . . . . .

F5 Art. 191 repealed (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53, Sch. 7 para. 3(11), **Sch. 8(1)** (with reg. 50, Sch. 7 para. 3(14))

Exemption orders

192.—(1) Where an order under this Article is in force in respect of an agreement covered by this Article, an employee who, immediately before the relevant date, is an employee to whom the agreement applies does not have any right to a redundancy payment.

(2) An agreement is covered by this Article if it is an agreement between—

(a) one or more employers or organisations of employers, and

(b) one or more trade unions representing employees,

under which employees to whom the agreement applies have a right in certain circumstances to payments on the termination of their contracts of employment.

(3) Where, on the application of all the parties to an agreement covered by this Article, the Department is satisfied, having regard to the provisions of the agreement, that the employees to whom the agreement applies should not have any right to a redundancy payment, it may make an order under this Article in respect of the agreement.

(4) The Department shall not make an order under this Article in respect of an agreement unless the agreement indicates (in whatever terms) the willingness of the parties to it to submit to an industrial tribunal any question arising under the agreement as to—

(a) the right of an employee to a payment on the termination of his employment, or

(b) the amount of such a payment.

(5) An order revoking an earlier order under this Article may be made in pursuance of an application by all or any of the parties to the agreement in question or in the absence of such an application.

Para. (6) rep. by 1999 NI 9

Pension rights

193. [F6] . . . . . .

F6 Art. 193 repealed (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53, Sch. 7 para. 3(12), **Sch. 8(1)** (with reg. 50, Sch. 7 para. 3(14))

Public offices etc.

194. A person does not have any right to a redundancy payment in respect of any employment which—

(a) is employment in a public office within the meaning of section 39 of the Superannuation Act 1965 or section 39 of the Superannuation (Northern Ireland) Act 1967, or

(b) is treated for the purposes of pensions and other superannuation benefits as service in the civil service of Northern Ireland or the civil service of the United Kingdom.

Overseas government employment

195.—(1) A person does not have any right to a redundancy payment in respect of employment in any capacity under the Government of an overseas territory.

(2) The reference in paragraph (1) to the Government of an overseas territory includes a reference to—

(a) a Government constituted for two or more overseas territories, and

(b) any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more overseas territories.

(3) In this Article references to an overseas territory are to any territory or country outside the United Kingdom.

Domestic servants

196.—(1) A person does not have any right to a redundancy payment in respect of employment as a domestic servant in a private household where the employer is the parent (or step-parent), grandparent, child (or step-child), grandchild or brother or sister (or half-brother or half-sister) of the employee.

(2) Subject to that, the provisions of this Part apply to an employee who is employed as a domestic servant in a private household as if—

(a) the household were a business, and

(b) the maintenance of the household were the carrying on of that business by the employer.

CHAPTER V

OTHER PROVISIONS ABOUT REDUNDANCY PAYMENTS

Amount of a redundancy payment

197 [F7]**.**—(1) The amount of a redundancy payment shall be calculated by—

(a) determining the period, ending with the relevant date, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In paragraph (1)(c) "the appropriate amount" means—

(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within sub-paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for each year of employment not within sub-paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under paragraph (1), no account shall be taken under that paragraph of any year of employment earlier than those twenty years.

(4) [F8] . . . . . .

(5) [F9] . . . . . .

(6) **[**[F10]Paragraphs (1) to (3)**]** apply for the purposes of any provision of this Part by virtue of which an industrial tribunal may determine that an employer is liable to pay to an employee—

(a) the whole of the redundancy payment to which the employee would have had a right apart from some other provision, or

(b) such part of the redundancy payment to which the employee would have had a right apart from some other provision as the tribunal thinks fit,

as if any reference to the amount of a redundancy payment were to the amount of the redundancy payment to which the employee would have been entitled apart from that other provision.
Para. (7) rep. by 1999 NI 9

(8) [F11] . . . . . .

F7 mod. by SR 1999/409

F8 Art. 197(4) repealed (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53, Sch. 7 para. 3(13)(a), **Sch. 8(1)** (with reg. 50, Sch. 7 para. 3(14))

F9 Art. 197(5) repealed (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53, Sch. 7 para. 3(13)(a), **Sch. 8(1)** (with reg. 50, Sch. 7 para. 3(14))

F10 Words in art. 197(6) substituted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 3(13)(b)** (with reg. 50, Sch. 7 para. 3(14))

F11 Art. 197(8) repealed (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53, Sch. 7 para. 3(13)(a), **Sch. 8(1)** (with reg. 50, Sch. 7 para. 3(14))

Modifications etc. (not altering text)

C1 Art. 197(1)-(3) applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **35(3)** (with reg. 50)

C2 Art. 197(1)(a) modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **35(5)** (with reg. 50)

References to industrial tribunals

198.—(1) Any question arising under this Part as to—

(a) the right of an employee to a redundancy payment, or

(b) the amount of a redundancy payment,

shall be referred to and determined by an industrial tribunal.

(2) For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.

(3) Any question whether an employee will become entitled to a redundancy payment if he is not dismissed by his employer and he terminates his contract of employment as mentioned in Article 185(1) shall for the purposes of this Part be taken to be a question as to the right of the employee to a redundancy payment.

(4) Where an order under Article 192 is in force in respect of an agreement, this Article has effect in relation to any question arising under the agreement as to the right of an employee to a payment on the termination of his employment, or as to the amount of such a payment, as if the payment were a redundancy payment and the question arose under this Part.

[[F12](5) Where a tribunal determines under paragraph (1) that an employee has a right to a redundancy payment, it may order the employer to pay to the employee such amount as the tribunal considers appropriate in all the circumstances to compensate the employee for any financial loss sustained by him which is attributable to the non-payment of the redundancy payment.**]**

F12 Art. 198(5) inserted (3.8.2010) by Employment Act (Northern Ireland) 2010 (c. 12), **ss. 6(2)**, 8(2) (with s. 6(3))

Claims for redundancy payment

199.—(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—

(a) the payment has been agreed and paid,

(b) the employee has made a claim for the payment by notice in writing given to the employer,

(c) a question as to the employee's right to, or the amount of, the payment has been referred to an industrial tribunal, or

(d) a complaint relating to his dismissal has been presented by the employee under Article 145.

(2) An employee is not deprived of his right to a redundancy payment by paragraph (1) if, during the period of six months immediately following the period mentioned in that paragraph, the employee—

(a) makes a claim for the payment by notice in writing given to the employer,

(b) refers to an industrial tribunal a question as to his right to, or the amount of, the payment, or

(c) presents a complaint relating to his dismissal under Article 145,

and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

(3) In determining under paragraph (2) whether it is just and equitable that an employee should receive a redundancy payment an industrial tribunal shall have regard to—

(a) the reason shown by the employee for his failure to take any such step as is referred to in paragraph (2) within the period mentioned in paragraph (1), and

(b) all the other relevant circumstances.

[[F13](4) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraphs (1)(c) and (2).**]**

F13 Art. 199(4) added (27.1.2020) by Employment Act (Northern Ireland) 2016 (c. 15), s. 29(2), **Sch. 2 para. 38**; S.R. 2020/1, art. 2(n)

Written particulars of redundancy payment

200.—(1) On making any redundancy payment, otherwise than in pursuance of a decision of a tribunal which specifies the amount of the payment to be made, the employer shall give to the employee a written statement indicating how the amount of the payment has been calculated.

(2) An employer who without reasonable excuse fails to comply with paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(3) If an employer fails to comply with the requirements of paragraph (1), the employee may by notice in writing to the employer require him to give to the employee a written statement complying with those requirements within such period (not being less than one week beginning with the day on which the notice is given) as may be specified in the notice.

(4) An employer who without reasonable excuse fails to comply with a notice under paragraph (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

CHAPTER VI

PAYMENTS BY DEPARTMENT

Modifications etc. (not altering text)

C3 Pt. XII Ch. VI (arts. 201-205) modified (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), 8(4), **Sch. 1 para. 5** (with reg. 21(1), Sch. 1 para. 3)

Applications for payments

201.—(1) Where an employee claims that his employer is liable to pay to him an employer's payment and either—

(a) that the employee has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or

(b) that the employer is insolvent and the whole or part of the payment remains unpaid,

the employee may apply to the Department for a payment under this Article.

(2) In this Part "employer's payment", in relation to an employee, means—

(a) a redundancy payment which his employer is liable to pay to him under this Part,[F14]. . .

[[F14](aa) a payment which his employer is liable to make to him under an agreement to refrain from instituting or continuing proceedings for a contravention or alleged contravention of Article 170 which has effect by virtue of Article 245(2)(e) or (f), or**]**

(b) a payment which his employer is, under an agreement in respect of which an order is in force under Article 192, liable to make to him on the termination of his contract of employment.

(3) In relation to any case where (in accordance with any provision of this Part) an industrial tribunal determines that an employer is liable to pay part (but not the whole) of a redundancy payment the reference in paragraph (2)(a) to a redundancy payment is to the part of the redundancy payment.

(4) In paragraph (1)(a) "legal proceedings"

(a) does not include any proceedings before an industrial tribunal, but

(b) includes any proceedings to enforce a decision or award of an industrial tribunal.

(5) An employer is insolvent for the purposes of paragraph (1)(b)—

(a) where the employer is an individual, if (but only if) paragraph (6) **[**[F15]or (8A)**]** is satisfied,[F16]. . .

(b) where the employer is a company, if (but only if) paragraph (7) **[**[F17]or (8A)**]** is satisfied**[**[F16], [F18]...**]**

[[F16](c) where the employer is a limited liability partnership, if (but only if) paragraph (8) **[**[F19]or (8A)**]** is satisfied**][**[F20], and

(d) where the employer is not any of the above, if (but only if) paragraph (8A) is satisfied.**]**

.

(6) This paragraph is satisfied in the case of an employer who is an individual if—

(a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors, or

(b) he has died and his estate falls to be administered in accordance with an order under Article 365 of the Insolvency (Northern Ireland) Order 1989.

(7) This paragraph is satisfied in the case of an employer which is a company—

(a) if a winding up order[F21]. . . has been made, or a resolution for voluntary winding up has been passed, with respect to the company,

[[F22](aa) if the company is in administration for the purposes of the Insolvency (Northern Ireland) Order 1989,**]**

(b) if a receiver or a manager of the company's undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or

(c) if a voluntary arrangement proposed in the case of the company for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 has been approved under that Part.

[[F16](8) This paragraph is satisfied in the case of an employer which is a limited liability partnership—

(a) if a winding-up order, an administration order or a determination for a voluntary winding-up has been made with respect to the limited liability partnership,

(b) if a receiver or a manager of the undertaking of the limited liability partnership has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the limited liability partnership comprised in or subject to the charge, or

(c) if a voluntary arrangement proposed in the case of the limited liability partnership for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 has been approved under that Part.**]**

[[F23](8A) This paragraph is satisfied in the case of an employer if—

(a) a request has been made for the first opening of collective proceedings—

(i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State, and

(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(b) the competent authority has—

(i) decided to open the proceedings, or

(ii) established that the employer's undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.

(8B) For the purposes of paragraph (8A)—

(a) "liquidator or a person performing a similar task" includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or a person performing a similar task;

(b) "competent authority" includes—

(i) a court,

(ii) a meeting of creditors,

(iii) a creditors' committee,

(iv) the creditors by a decision procedure, and

(v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.

(8C) An employee may apply under this Article only if the employee worked or habitually worked in Northern Ireland in that employment to which the application relates.**]**

F14 1998 NI 8

F15 Words in art. 201(5)(a) inserted (31.1.2019) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(2), **Sch. para. 255(2)(a)(i)** (with regs. 4, 5)

F16 SR 2004/307

F17 Words in art. 201(5)(b) inserted (31.1.2019) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(2), **Sch. para. 255(2)(a)(ii)** (with regs. 4, 5)

F18 Word in art. 201(5)(b) omitted (31.1.2019) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(2), **Sch. para. 255(2)(a)(ii)** (with regs. 4, 5)

F19 Words in art. 201(5)(c) inserted (31.1.2019) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(2), **Sch. para. 255(2)(a)(iii)** (with regs. 4, 5)

F20 Art. 201(5)(d) and word inserted (31.1.2019) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(2), **Sch. para. 255(2)(a)(iv)** (with regs. 4, 5)

F21 Words in art. 201(7)(a) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 54(2)(a), Sch. 9; S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2**-7)

F22 Art. 201(7)(aa) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 54(2)(b); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2**-7)

F23 Art. 201(8A)-(8C) inserted (31.1.2019) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(2), **Sch. para. 255(2)(b)** (with regs. 4, 5)

Making of payments

202.—(1) Where, on an application under Article 201 by an employee in relation to an employer's payment, the Department is satisfied that the requirements specified in paragraph (2) are met, it shall pay to the employee out of the Northern Ireland National Insurance Fund a sum calculated in accordance with Article 203 but reduced by so much (if any) of the employer's payment as has already been paid.

(2) The requirements referred to in paragraph (1) are—

(a) that the employee is entitled to the employer's payment, and

(b) that one of the conditions specified in sub-paragraphs (a) and (b) of paragraph (1) of Article 201 is fulfilled,

and, in a case where the employer's payment is a payment such as is mentioned in paragraph (2)(b) of that section, that the employee's right to the payment arises by virtue of a period of continuous employment (computed in accordance with the provisions of the agreement in question) which is not less than two years.

(3) Where under this Article the Department pays a sum to an employee in respect of an employer's payment—

(a) all rights and remedies of the employee with respect to the employer's payment, or (if the Department has paid only part of it) all the rights and remedies of the employee with respect to that part of the employer's payment, are transferred to and vest in the Department, and

(b) any decision of an industrial tribunal requiring the employer's payment to be paid to the employee has effect as if it required that payment, or that part of it which the Department has paid, to be paid to the Department.

(4) Any money recovered by the Department by virtue of paragraph (3) shall be paid into the Northern Ireland National Insurance Fund.

Amount of payments

203.—(1) The sum payable to an employee by the Department under Article 202—

(a) where the employer's payment to which the employee's application under Article 201 relates is a redundancy payment or a part of a redundancy payment, is a sum equal to the amount of the redundancy payment or part,[F24]. . .

[[F24](aa) where the employer's payment to which the employee's application under Article 201 relates is a payment which his employer is liable to make to him under an agreement having effect by virtue of Article 245(2)(e) or (f), is a sum equal to the amount of the employer's payment or of any reduncancy payment which the employer would have been liable to pay to the employee but for the agreement, whichever is less, and**]**

(b) where the employer's payment to which the employee's application under Article 201 relates is a payment which the employer is liable to make under an agreement in respect of which an order is in force under Article 192, is a sum equal to the amount of the employer's payment or of the relevant redundancy payment, whichever is less.

(2) The reference in paragraph (1)(b) to the amount of the relevant redundancy payment is to the amount of the redundancy payment which the employer would have been liable to pay to the employee on the assumptions specified in paragraph (3).

(3) The assumptions referred to in paragraph (2) are that—

(a) the order in force in respect of the agreement had not been made,

(b) the circumstances in which the employer's payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in those circumstances,

(c) the relevant date, in relation to any such redundancy payment, had been the date on which the termination of the employee's contract of employment is treated as having taken effect for the purposes of the agreement, and

(d) in so far as the provisions of the agreement relating to the circumstances in which the continuity of an employee's period of employment is to be treated as broken, and the weeks which are to count in computing a period of employment, are inconsistent with the provisions of Chapter III of Part I, the provisions of the agreement were substituted for those provisions.

F24 1998 NI 8

Information relating to applications for payments

204.—(1) Where an employee makes an application to the Department under Article 201, the Department may, by notice in writing given to the employer, require the employer—

(a) to provide the Department with such information, and

(b) to produce for examination on behalf of the Department documents in his custody or under his control of such description,

as the Department may reasonably require for the purpose of determining whether the application is well-founded.

(2) Where a person on whom a notice is served under paragraph (1) fails without reasonable excuse to comply with a requirement imposed by the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person is guilty of an offence if—

(a) in providing any information required by a notice under paragraph (1), he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or

(b) he produces for examination in accordance with a notice under paragraph (1) a document which to his knowledge has been wilfully falsified.

(4) A person guilty of an offence under paragraph (3) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

References to industrial tribunals

205.—(1) Where on an application made to the Department for a payment under Article 201 it is claimed that an employer is liable to pay an employer's payment, there shall be referred to an industrial tribunal—

(a) any question as to the liability of the employer to pay the employer's payment, and

(b) any question as to the amount of the sum payable in accordance with Article 203.

(2) For the purposes of any reference under this Article an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.

CHAPTER VII

SUPPLEMENTARY

Application of Part to particular cases

Employment not under contract of employment

206.—(1) The Department may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part and the provisions of this Order supplementary to this Part have effect in relation to any employment of a description to which this Article applies as may be so prescribed as if —

(a) it were employment under a contract of employment,

(b) any person engaged in employment of that description were an employee, and

(c) such person as may be determined by or under the regulations were his employer.

(2) This Article applies to employment of any description which—

(a) is employment in the case of which secondary Class 1 contributions are payable under Part I of **[**[F25]the Contributions and Benefits Act 1992**]** in respect of persons engaged in it, but

(b) is not employment under a contract of service or of apprenticeship or employment of any description mentioned in Article 194 (whether as originally enacted or as modified by an order under Article 250(1)).

F25 Words in art. 206(2)(a) substituted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), **Sch. 1 para. 4(18)**; S.R. 2015/86, art. 3(2)(d)

Termination of employment by statute

207.—(1) The Department may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part has effect in relation to any person who by virtue of any statutory provisions—

(a) is transferred to, and becomes a member of, a body specified in those provisions, but

(b) at a time so specified ceases to be a member of that body unless before that time certain conditions so specified have been fulfilled,

as if the cessation of his membership of that body by virtue of those provisions were dismissal by his employer by reason of redundancy.

(2) The power conferred by paragraph (1) is exercisable whether or not membership of the body in question constitutes employment within the meaning of Article 3(5); and, where that membership does not constitute such employment, that power may be exercised in addition to any power exercisable under Article 206.

Employees paid by person other than employer

208.—(1) For the purposes of the operation of the provisions of this Part (and Chapter III of Part I) in relation to any employee whose remuneration is, by virtue of any statutory provision, payable to him by a person other than his employer, each of the references to the employer specified in paragraph (2) shall be construed as a reference to the person by whom the remuneration is payable.

(2) The references referred to in paragraph (1) are the first reference in Article 170(1), the third reference in Article 175(3), the first reference in Article 177(3) and the first reference in Article 178(2)(c) and the references in Articles 10(5), 177(2)(b), 178(4) and (5), 184(a) and (b), 185(3), 187(1)(b), 193(4), 197(6), 199 to 204 and 205(1).

Death of employer or employee

Death of employer: dismissal

209.—(1) Where the contract of employment of an employee is taken for the purposes of this Part to be terminated by his employer by reason of the employer's death, this Part has effect in accordance with the following provisions of this Article.

(2) Article 173 applies as if—

(a) in paragraph (1)(a), for the words “in pursuance” onwards there were substituted “ by a personal representative of the deceased employer ”,

(b) in paragraph (1)(b), for the words “either immediately” onwards there were substituted “ not later than eight weeks after the death of the deceased employer ”, and

(c) in paragraphs (2)(b) and (6)(a), for the word “employer” there were substituted “ personal representative of the deceased employer ”.

(3) Article 176(1) applies as if—

(a) for the words “before the end of his employment” there were substituted “ by a personal representative of the deceased employer ”, and

(b) for the words “either immediately” onwards there were substituted “ not later than eight weeks after the death of the deceased employer ”.

(4) For the purposes of Article 176—

(a) provisions of the contract as renewed, or of the new contract, do not differ from the corresponding provisions of the contract in force immediately before the death of the deceased employer by reason only that the personal representative would be substituted for the deceased employer as the employer, and

(b) no account shall be taken of that substitution in determining whether refusal of the offer was unreasonable or whether the employee acted reasonably in terminating or giving notice to terminate the new or renewed employment.

(5) Article 181 has effect as if—

(a) paragraph (1) were omitted, and

(b) in paragraph (2), sub-paragraph (a) were omitted and, in sub-paragraph (b), for the word "four" there were substituted " eight ".

(6) For the purposes of the application of this Part (in accordance with Article 196(2)) in relation to an employee who was employed as a domestic servant in a private household, references in this Article and Articles 14(4) and (5) and 210 to a personal representative include a person to whom the management of the household has passed, otherwise than in pursuance of a sale or other disposition for valuable consideration, in consequence of the death of the employer.

Death of employer: lay-off and short-time

210.—(1) Where an employee is laid off or kept on short-time and his employer dies, this Part has effect in accordance with the following provisions of this Article.

(2) Where the employee—

(a) has been laid off or kept on short-time for one or more weeks before the death of the employer,

(b) has not given the deceased employer notice of intention to claim before the employer's death,

(c) after the employer's death has his contract of employment renewed, or is re-engaged under a new contract, by a personal representative of the deceased employer, and

(d) after renewal or re-engagement is laid off or kept on shorttime for one or more weeks by the personal representative,

the week in which the employer died and the first week of the employee's employment by the personal representative shall be treated for the purposes of Chapter III as consecutive weeks (and references to four weeks or thirteen weeks shall be construed accordingly).

(3) The following provisions of this Article apply where—

(a) the employee has given the deceased employer notice of intention to claim before the employer's death,

(b) the employer's death occurred before the end of the period of four weeks after the service of the notice, and

(c) the employee has not terminated his contract of employment by notice expiring before the employer's death.

(4) If the contract of employment is not renewed, and the employee is not re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim—

(a) Articles 184 and 187 do not apply, but

(b) (subject to that) Chapter III applies as if the employer had not died and the employee had terminated the contract of employment by a week's notice, or by the minimum notice

which he is required to give to terminate the contract (if longer than a week), expiring at the end of that period.

(5) If—

(a) the contract of employment is renewed, or the employee is re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim, and

(b) the employee was laid off or kept on short-time by the deceased employer for one or more of those weeks and is laid off or kept on short-time by the personal representative for the week, or for the next two or more weeks, following the renewal or re-engagement,

paragraph (6) has effect.

(6) Where this paragraph has effect Chapter III applies as if—

(a) all the weeks mentioned in paragraph (5) were consecutive weeks during which the employee was employed (but laid off or kept on short-time) by the same employer, and

(b) the periods specified by Article 185(3)(a) and (b) as the relevant period were extended by any week or weeks any part of which was after the death of the employer and before the date on which the renewal or re-engagement took effect.

Death of employee

211.—(1) Where an employee whose employer has given him notice to terminate his contract of employment dies before the notice expires, this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.

(2) Where—

(a) an employee's contract of employment has been terminated by the employer,

(b) (by virtue of paragraph (5) of Article 180) a date later than the relevant date as defined by the previous provisions of that Article is the relevant date for the purposes of certain provisions of this Order, and

(c) the employee dies before that date,

that paragraph applies as if the notice to which it refers would have expired on the employee's death.

(3) Where—

(a) an employer has given notice to an employee to terminate his contract of employment and has offered to renew his contract of employment or to re-engage him under a new contract, and

(b) the employee dies without having accepted or refused the offer and without the offer having been withdrawn,

Article 176(2) applies as if for the words “he unreasonably refuses” there were substituted “ it would have been unreasonable on his part to refuse ”.

(4) Where an employee's contract of employment has been renewed or he has been re-engaged under a new contract—

(a) if he dies during the trial period without having terminated, or given notice to terminate, the contract, Article 176(4) applies as if for sub-paragraph (d) there were substituted—

“(d) it would have been unreasonable for the employee during the trial period to terminate or give notice to terminate the contract.” , and

(b) if during that trial period he gives notice to terminate the contract but dies before the notice expires, Articles 173(2) and 176(4) apply as if the notice had expired (and the contract had been terminated by its expiry) on the date of the employee's death.

(5) Where in the circumstances specified in sub-paragraphs (a) and (b) of paragraph (3) of Article 171 the employee dies before the notice given by him under sub-paragraph (b) of that paragraph expires—

(a) if he dies before his employer has given him a notice such as is specified in paragraph (2) of Article 177, paragraphs (3) and (4) of that Article apply as if the employer had given him such a notice and he had not complied with it, and

(b) if he dies after his employer has given him such a notice, that Article applies as if the employee had not died but did not comply with the notice.

(6) Where an employee has given notice of intention to claim—

(a) if he dies before he has given notice to terminate his contract of employment and before the relevant period (as defined in paragraph (3) of Article 185) has expired, that section does not apply, and

(b) if he dies within the period of seven days after the service of the notice of intention to claim, and before the employer has given a counter-notice, Chapter III applies as if the employer had given a counter-notice within that period of seven days.

(7) Where a claim for a redundancy payment is made by a personal representative of a deceased employee—

(a) if the employee died before the end of the period of six months beginning with the relevant date, paragraph (1) of Article 199, and

(b) if the employee died after the end of the period of six months beginning with the relevant date but before the end of the following period of six months, paragraph (2) of that Article,

applies as if for the words “six months” there were substituted “ one year ”.

Equivalent payments

References to industrial tribunals

212.—(1) Where the terms and conditions (whether or not they constitute a contract of employment) on which a person is employed in employment of any description mentioned in Article 194 include provision—

(a) for the making of a payment to which this Article applies, and

(b) for referring to an industrial tribunal any question as to the right of any person to such a payment in respect of that employment or as to the amount of such a payment,

the question shall be referred to and determined by an industrial tribunal.

(2) This Article applies to any payment by way of compensation for loss of employment of any description mentioned in Article 194 which is payable in accordance with arrangements falling within paragraph (3) or (4).

(3) The arrangements which fall within this paragraph are arrangements made with the approval of the Department of Finance and Personnel for securing that a payment will be made—

(a) in circumstances which in the opinion of that Department correspond (subject to the appropriate modifications) to those in which a right to a redundancy payment would have accrued if the provisions of this Part (apart from Article 194 and this Article) applied, and

(b) on a scale which in the opinion of the Department of Finance and Personnel, taking into account any sums payable in accordance with—

(i) a scheme made under Article 3 of the Superannuation (Northern Ireland) Order 1972, or

(ii) the Superannuation Acts (Northern Ireland) 1967 and 1969,

to or in respect of the person losing the employment in question, corresponds (subject to the appropriate modifications) to that on which a redundancy payment would have been payable if those provisions applied.

(4) The arrangements which fall within this paragraph are those which fall within section 177(3) of the Employment Rights Act 1996.

Other supplementary provisions

Old statutory compensation schemes

213.—(1) The Department may make provision by regulations for securing that where—

(a) (apart from this Article) a person is entitled to compensation under a statutory provision to which this Article applies, and

(b) the circumstances are such that he is also entitled to a redundancy payment,

the amount of the redundancy payment shall be set off against the compensation to which he would be entitled apart from this Article; and any statutory provision to which any such regulations apply shall have effect subject to the regulations.

(2) This Article applies to any statutory provision—

(a) which was in force immediately before 6th December 1965, and

(b) under which the holders of such situations, places or employments as arc specified in that provision are, or may become, entitled to compensation for loss of employment, or for loss or diminution of emoluments or of pension rights, in consequence of the operation of any other statutory provision referred to in that provision.

Notices

214.—(1) Any notice which under this Part is required or authorised to be given by an employer to an employee may be given by being delivered to the employee, or left for him at his usual or last-known place of residence, or sent by post addressed to him at that place.

(2) Any notice which under this Part is required or authorised to m be given by an employee to an employer may be given either by the employee himself or by a person authorised by him to act on his behalf, and (whether given by or on behalf of the employee)—

(a) may be given by being delivered to the employer, or sent by post addressed to him at the place where the employee is or was employed by him, or

(b) if arrangements have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, left for such a person at a place so designated or sent by post to such a person at an address so designated.

(3) In this Article any reference to the delivery of a notice includes, in relation to a notice which is not required by this Part to be in writing, a reference to the oral communication of the notice.

(4) Any notice which, in accordance with any provision of this Article, is left for a person at a place referred to in that provision shall, unless the contrary is proved, be presumed to have been received by him on the day on which it was left there.

(5) Nothing in paragraph (1) or (2) affects the capacity of an employer to act by a servant or agent for the purposes of any provision of this Part (including either of those paragraphs).

(6) In relation to an employee to whom Article 208 applies, this Article has effect as if—

(a) any reference in paragraph (1) or (2) to a notice required or authorised to be given by or to an employer included a reference to a notice which, by virtue of that Article, is required or authorised to be given by or to the person by whom the remuneration is payable,

(b) in relation to a notice required or authorised to be given to that person, any reference to the employer in sub-paragraph (a) or (b) of paragraph (2) were a reference to that person, and

(c) the reference to an employer in paragraph (5) included a reference to that person.

Interpretation

215.—(1) In this Part—

"counter-notice" shall be construed in accordance with Article 184(a),

"dismissal" and "dismissed" shall be construed in accordance with Articles 171 to 173,

"employer's payment" has the meaning given by Article 201,

"notice of intention to claim" shall be construed in accordance with Article 183(1),

"obligatory period of notice" has the meaning given by Article 171(4), and

"trial period" shall be construed in accordance with Article 173(3).

(2) In this Part—

(a) references to an employee being laid off or being eligible for a redundancy payment by reason of being laid off, and

(b) references to an employee being kept on short-time or being eligible for a redundancy payment by reason of being kept on short-time,

shall be construed in accordance with Articles 182 and 183.

Status:
Point in time view as at 27/01/2020.

Changes to legislation:
The Employment Rights (Northern Ireland) Order 1996, PART XII is up to date with all changes known to be in force on or before 27 June 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.