
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XII

REDUNDANCY PAYMENTS ETC.

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),
- (b) he is employed under a contract for a fixed term and that term expires without being renewed under the same contract, 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.

Failure to permit return after childbirth treated as dismissal

- 172.—(1) Subject to paragraph (2) and Article 173, where an employee who—
- (a) has the right conferred by Article 111, and
 - (b) has exercised it in accordance with Article 114,
- is not permitted to return to work, she shall be taken for the purposes of this Part to be dismissed for the reason for which she was not permitted to return with effect from the notified day of return (being deemed to have been continuously employed until that day).
- (2) Where in proceedings arising out of a failure to permit an employee to return to work pursuant to the right conferred by Article 111 the employer shows—
- (a) that the reason for the failure is that the employee is redundant, and
 - (b) that the employee was, or (had she continued to be employed by him) would have been, dismissed by reason of redundancy on a day falling after the commencement of her maternity leave period and before the notified day of return,

for the purposes of this Part the employee shall not be taken to be dismissed with effect from the notified day of return but shall be taken to be dismissed by reason of redundancy with effect from that earlier day (being deemed to have been continuously employed until that earlier day).

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
- (c) in relation to an employee who is employed under a contract for a fixed term which expires without being renewed under the same contract, means the date on which the term expires.

(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.

(7) Where an employee is taken to be dismissed for the purposes of this Part by virtue of Article 172(1), references in this Part to the relevant date are (unless the context otherwise requires) to the notified date of return.

Provisions supplementing Articles 173 and 176

181.—(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.
- (3) Where Article 173 or 176 applies in a case within Article 172(1)—
- (a) references to a renewal or re-engagement taking effect immediately on, or after an interval of not more than four weeks after, the end of the employment are to a renewal or re-engagement taking effect on, or after an interval of not more than four weeks after, the notified day of return, and
 - (b) references to provisions of the previous contract are to the provisions of the contract under which the employee worked immediately before the beginning of her maternity leave period.