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*Status: Point in time view as at 05/12/2011.*

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## STATUTORY INSTRUMENTS

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# 1996 No. 1921 (N.I. 18)

## The Industrial Tribunals (Northern Ireland) Order 1996 <sup>F1</sup>

- - - - - 23rd July 1996

**F1** functions transferred by SR 1999/481

**Modifications etc. (not altering text)**

**C1** Order: certain provisions applied (with modifications) (1.10.2010) by [Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/312\)](#), regs. 1, 16, Sch. 2

### Title and commencement

1.—(1) This Order may be cited as the Industrial Tribunals (Northern Ireland) Order 1996.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

### Interpretation

2.—(1) Subject to paragraph (2), the Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) For the purposes of this Order, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and, where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) In this Order—

“the Agency” means the Labour Relations Agency;

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“the Department” means the Department of Economic Development;

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

“employer”, in relation to an employee, means the person by whom the employee is (or, where the employment has ceased, was) employed;

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“employers' association” has the same meaning as in the Trade Union and Labour Relations (Northern Ireland) Order 1995;

“employment” means employment under a contract of employment and “employed” shall be construed accordingly;

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996;

“government department” means a Northern Ireland department or a department of the Government of the United Kingdom;

“industrial tribunal procedure regulations” has the meaning assigned by Article 9(1);

“statutory provision” has the meaning assigned by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“successor”, in relation to the employer of an employee, means (subject to paragraph (4)) a person who in consequence of a change occurring (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the undertaking, or of the part of the undertaking, for the purposes of which the employee was employed, has become the owner of the undertaking or part;

“trade union” has the same meaning as in the Trade Union and Labour Relations (Northern Ireland) Order 1995.

(4) The definition of “successor” in paragraph (3) has effect (subject to the necessary modifications) in relation to a case where—

(a) the person by whom an undertaking or part of an undertaking is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change, or

(b) the persons by whom an undertaking or part of an undertaking is owned immediately before a change (whether as partners, trustees or otherwise) include the persons by whom, or include one or more of the persons by whom, it is owned immediately after the change,

as it has effect where the previous owner and the new owner are wholly different persons.

(5) For the purposes of this Order any two employers shall be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control, or

(b) both are companies of which a third person (directly or indirectly) has control;

and “associated employer” shall be construed accordingly.

### *Industrial tribunals*

#### **Industrial tribunals**

**3.—**(1) The Department may by regulations make provision for the establishment of tribunals to be known as industrial tribunals.

(2) Regulations made (or having effect as if made) wholly or partly under Article 30 of the Industrial Training (Northern Ireland) Order 1984 and in operation immediately before this Order comes into operation shall, so far as made (or having effect as if made) under that provision, continue to have effect (until revoked) as if made under paragraph (1); and the tribunals established in pursuance of such regulations shall continue to be known as industrial tribunals.

## *Jurisdiction*

### **Jurisdiction of industrial tribunals**

4. Industrial tribunals shall exercise the jurisdiction conferred on them by or by virtue of this Order or any other statutory provision.

### **Power to confer further jurisdiction on industrial tribunals**

5.—(1) The<sup>F2</sup> Department] may by order provide that proceedings in respect of—  
(a) any claim to which this Article applies, or  
(b) any claim to which this Article applies and which is of a description specified in the order, may, subject to such exceptions (if any) as may be so specified, be brought before an industrial tribunal.

(2) Subject to paragraph (3), this Article applies to—

- (a) a claim for damages for breach of a contract of employment or other contract connected with employment,
- (b) a claim for a sum due under such a contract, and
- (c) a claim for the recovery of a sum in pursuance of any statutory provision relating to the terms or performance of such a contract,

if the claim is such that a court in Northern Ireland would under the law for the time being in force have jurisdiction to hear and determine an action in respect of the claim.

(3) This Article does not apply to a claim for damages, or for a sum due, in respect of personal injuries.

(4) Any jurisdiction conferred on an industrial tribunal by virtue of this Article in respect of any claim is exercisable concurrently with any court in Northern Ireland which has jurisdiction to hear and determine an action in respect of the claim.

(5) In this Article “personal injuries” includes any disease and any impairment of a person's physical or mental condition.

(6) In this Article a reference to breach of a contract includes a reference to breach of—

- (a) a term implied in a contract by or under any statutory provision or otherwise,
- (b) a term of a contract as modified by or under any statutory provision or otherwise, and
- (c) a term which, although not contained in a contract, is incorporated in the contract by another term of the contract.

<b>F2</b> SI 1999/663
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## *Membership etc.*

### **Composition of a tribunal**

6.—(1) Subject to the following provisions of this Article<sup>F3</sup> and to Article 9(3A)], proceedings before an industrial tribunal shall be heard by—

- (a) <sup>F4</sup> <sup>F5</sup>the person who, in accordance with regulations made under Article 3(1), is the chairman, and

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<sup>F6</sup>(b <sup>F4</sup> <sup>F5</sup>two other members, or (with the consent of the parties) one other member, selected as the other members (or member) in accordance with regulations so made.

(2) Subject to paragraph (5), the proceedings specified in paragraph (3) shall be heard by the person mentioned in paragraph (1)(a) alone.

(3) The proceedings referred to in paragraph (2) are—

[<sup>F3</sup>(a) proceedings—

(i) on an application under Article 163, 166 or 167 of the Employment Rights Order (interim relief orders);

(ii) on a complaint under Article 55 (protection of wages), Article 66 (guarantee payment), Article 220 (protective award) or Article 233 (payment on insolvency of employer) of that Order;

(iii) on a complaint under Article 102(1) of that Order relating to Article 96 (suspension from work on medical grounds) of that Order;

(iv) on a reference under Article 43 (statement of particulars of employment and itemised pay statement), Article 198 (redundancy payment) or Article 205 (liability for employer's payment) of that Order; or

(v) for an appointment under Article 248(4) (institution or continuance of tribunal proceedings where employee is deceased) of that Order;]

[<sup>F3</sup>(aa) proceedings on a complaint under Article 36 (employer deducting unauthorised or excessive union subscription) or Article 61 (employer deducting or refusing to deduct union contribution) of the Trade Union and Labour Relations (Northern Ireland) Order 1995;

(ab) proceedings on a complaint under [<sup>F7</sup>regulation 15(10) of the Transfer of Undertakings (Protection of Employment) Regulations 2006][<sup>F8</sup>or regulation 15(10) of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006] ;]

(b) proceedings on a complaint under section 122 of the Pension Schemes (Northern Ireland) Act 1993;

[<sup>F9</sup>(bb) proceedings on a complaint under section 11 of the National Minimum Wage Act 1998;

(bc) proceedings on an appeal under section 19 or 22 of the National Minimum Wage Act 1998;]

(c) proceedings in respect of which an industrial tribunal has jurisdiction by virtue of Article 5;

(d) proceedings in which the parties have given their written consent to the proceedings being heard in accordance with paragraph (2) (whether or not they have subsequently withdrawn it), and

*Sub#para. (e) rep. by 1998 NI 8*

(f) proceedings in which the person (or, where more than one, each of the persons) against whom the proceedings are brought does not, or has ceased to, contest the case.

(4) The Department may by order amend the provisions of paragraph (3).

(5 <sup>F4</sup> <sup>F5</sup>Proceedings specified in paragraph (3) shall be heard in accordance with paragraph (1) if a person who, in accordance with regulations made under Article 3(1), may be the chairman of an industrial tribunal, having regard to—

(a) whether there is a likelihood of a dispute arising on the facts, which makes it desirable for the proceedings to be heard in accordance with paragraph (1),

(b) whether there is a likelihood of an issue of law arising which would make it desirable for the proceedings to be heard in accordance with paragraph (2),

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- (c) any views of any of the parties as to whether or not the proceedings ought to be heard in accordance with either of those paragraphs, and
- (d) whether there are other proceedings which might be heard concurrently but which are not proceedings specified in paragraph (3),

decides at any stage of the proceedings that the proceedings are to be heard in accordance with paragraph (1).

(6) Where (in accordance with the following provisions of this Order) the Department makes industrial tribunal procedure regulations, the regulations may provide that<sup>F3</sup> any act which is required or authorised by the regulations to be done by an industrial tribunal and is of a description specified by the regulations for the purposes of this paragraph may] be done by the person mentioned in paragraph (1)(a) alone.

<sup>F3</sup>(6A) Paragraph (6) in particular enables industrial tribunal procedure regulations to provide that—

- (a) the determination of proceedings in accordance with regulations under Article 9(3A), (3B) or (3C)(a),
- (b) the carrying-out of pre-hearing reviews in accordance with regulations under paragraph (1) of Article 11 (including the exercise of powers in connection with such reviews in accordance with regulations under sub-paragraph (b) of that paragraph), or
- (c) the hearing and determination of a preliminary issue in accordance with regulations under Article 11(4) (where it involves hearing witnesses other than the parties or their representatives as well as where, in accordance with regulations under Article 9(3C)(b), it does not),

may be done by the person mentioned in paragraph (1)(a) alone.]

<sup>F3</sup>(6B) Industrial tribunal procedure regulations may (subject to paragraph (6C)) also provide that any act which—

- (a) by virtue of paragraph (6) may be done by the person mentioned in paragraph (1)(a) alone, and
- (b) is of a description specified by the regulations for the purposes of this paragraph,

may be done by a person appointed as a legal officer in accordance with regulations under Article 3(1); and any act so done shall be treated as done by an industrial tribunal.

(6C) But regulations under paragraph (6B) may not specify—

- (a) the determination of any proceedings, other than proceedings in which the parties have agreed the terms of the determination or in which the person bringing the proceedings has given notice of the withdrawal of the case, or
- (b) the carrying-out of pre-hearing reviews in accordance with regulations under Article 11(1).]

Para. (7) rep. by 1999 NI 9

<b>F3</b>	1998 NI 8
<b>F4</b>	mod. by SR 2004/165
<b>F5</b>	mod. by SR 2005/150
<b>F6</b>	prosp. subst. by 1998 NI 8
<b>F7</b>	Words in art. 6(3)(ab) substituted (6.4.2006) by S.I. 2006/246, reg. 20(3), <b>Sch. 2 para. 9</b> (with reg. 21(1))
<b>F8</b>	Words in art. 6(3)(ab) inserted (6.4.2006) by S.R. 2006/177, reg. 20(1), <b>Sch. 1 para. 1</b>
<b>F9</b>	1998 c. 39

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## Remuneration, fees and allowances

7.—(1) The Department may pay to—

- (a) the President and Vice-President of the Industrial Tribunals and the Fair Employment Tribunal,<sup>F10</sup> . . .
- (b) any person who is a member on a full-time basis of a panel of chairmen of tribunals which is appointed in accordance with regulations made under Article 3(1),<sup>F10</sup> and]
- <sup>F10</sup>(c) any person who is a legal officer appointed in accordance with such regulations,]

such remuneration as it may with the consent of the Department of Finance and Personnel determine.

(2) The Department may pay to—

- (a) members of industrial tribunals,
- (b) any assessors appointed for the purposes of proceedings before industrial tribunals, and
- (c) any persons required for the purposes of section 2A(1)(h) of the Equal Pay Act (Northern Ireland) 1970 to prepare reports,

such fees and allowances as it may with the consent of the Department of Finance and Personnel determine.

(3) The Department may pay to any other persons such allowances as it may with the consent of the Department of Finance and Personnel determine for the purposes of, or in connection with, their attendance at industrial tribunals.

**F10** 1998 NI 8

## Procedure

### Conduct of hearings

8.—(1) A person Procedure may appear before an industrial tribunal in person or be represented by—

- (a) counsel or a solicitor,
- (b) a representative of a trade union or an employers' association, or
- (c) any other person whom he desires to represent him.

(2) Part I of the Arbitration Act 1996 does not apply to any proceedings before an industrial tribunal.

### Industrial tribunal procedure regulations

9.—(1) The Department may by regulations (“industrial tribunal procedure regulations”) make such provision as appears to it to be necessary or expedient with respect to proceedings before industrial tribunals.

(2) Proceedings before industrial tribunals shall be instituted in accordance with industrial tribunal procedure regulations.

(3) Industrial tribunal procedure regulations may, in particular, include provision—

- (a) for determining by which tribunal any proceedings are to be determined,
- (b) for enabling an industrial tribunal to hear and determine proceedings brought by virtue of Article 5 concurrently with proceedings brought before the tribunal otherwise than by virtue of that Article,

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- (c) for treating the Department (either generally or in such circumstances as may be prescribed by the regulations) as a party to any proceedings before an industrial tribunal (where it would not otherwise be a party to them) and entitling it to appear and to be heard accordingly,
- (d) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses,
- (e) for enabling an industrial tribunal, on the application of any party to the proceedings before it or of its own motion, to order such discovery or inspection of documents, or the furnishing of such further particulars, as might be ordered by a county court on application by a party to proceedings before it,
- (f) for prescribing the procedure to be followed in any proceedings before an industrial tribunal, including provisions—  
*Head (i) rep. by 1998 NI 8*
  - [<sup>F11</sup>(ia) for postponing fixing a time and place for a hearing, or postponing a time fixed for a hearing, for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, and]
  - (ii) for enabling an industrial tribunal to review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with the regulations,
- (g) for the appointment of one or more assessors for the purposes of any proceedings before an industrial tribunal, where the proceedings are brought under a statutory provision which provides for one or more assessors to be appointed,
- (h) for authorising an industrial tribunal to require persons to furnish information and produce documents to a person required for the purposes of section 2A(1)(h) of the Equal Pay Act (Northern Ireland) 1970 to prepare a report, and
- (i) for the registration and proof of decisions, orders and awards of industrial tribunals.

[<sup>F11</sup>(3ZA) Industrial tribunal procedure regulations may—

- (a) authorise the Department to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of instituting, or entering an appearance to, proceedings before industrial tribunals;
- (b) authorise the Department to prescribe requirements in relation to documents to be supplied with any such form, and
- (c) make provision about the publication of anything prescribed under authority conferred by virtue of this paragraph.]

[<sup>F12</sup>

<sup>F13</sup>(3A) Industrial tribunal procedure regulations may authorise the determination of proceedings without any hearing in such circumstances as the regulations may prescribe.]

[

<sup>F14</sup>(3AA) Industrial tribunal procedure regulations under paragraph (3A) may only authorise the determination of proceedings without any hearing in circumstances where—

- (a) all the parties to the proceedings consent in writing to the determination without a hearing, or
- (b) the person (or, where more than one, each of the persons) against whom the proceedings are brought—
  - (i) has presented no response in the proceedings, or

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(ii) does not contest the case.

(3AB) For the purposes of paragraph (3AA)(b), a person does not present a response in the proceedings if he presents a response but, in accordance with provision made by the regulations, it is not accepted.]

(3B) Industrial tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom the proceedings are brought (or his or their representatives) where—

- (a) the person (or, where more than one, each of the persons) against whom the proceedings are brought has done nothing to contest the case, or
- (b) it appears from the application made by the person (or, where more than one, each of the persons) bringing the proceedings that he is not (or they are not) seeking any relief which an industrial tribunal has power to give or that he is not (or they are not) entitled to any such relief.

(3C) Industrial tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom, and the person or persons against whom, the proceedings are brought (or his or their representatives) where—

- (a) an industrial tribunal is on undisputed facts bound by the decision of a court in another case to dismiss the case of the person or persons by whom, or of the person or persons against whom, the proceedings are brought, or
  - (b) the proceedings relate only to a preliminary issue which may be heard and determined in accordance with regulations under Article 11(4).]
- (4) A person who without reasonable excuse fails to comply with—
- (a) any requirement imposed by virtue of paragraph (3)(d) or(h),<sup>F12</sup> . . .
  - (b) any requirement with respect to the discovery or inspection of documents imposed by virtue of paragraph (3)(e),<sup>[F12</sup> or]
  - <sup>[F12</sup>(c) any requirement imposed by virtue of industrial tribunal procedure regulations to give written answers for the purpose of facilitating the determination of proceedings as mentioned in paragraph (3A), (3B) or (3C),]

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Subject to any regulations under Article 13(1)(a), industrial tribunal procedure regulations may include provision authorising or requiring an industrial tribunal, in circumstances specified in the regulations, to send notice or a copy of—

- (a) any document specified in the regulations which relates to any proceedings before the tribunal, or
- (b) any decision, order or award of the tribunal,

to any government department or other person or body so specified.

(6) Where in accordance with industrial tribunal procedure regulations an industrial tribunal determines in the same proceedings—

- (a) a complaint presented under Article 145 of the Employment Rights Order (unfair dismissal), and
- (b) a question referred under Article 198 of that Order (redundancy payments),

paragraph (2) of that Article has no effect for the purposes of the proceedings in so far as they relate to the complaint under Article 145.



- F11** 2003 NI 15
- F12** 1998 NI 8
- F13** 2003 NI 15
- F14** Art. 9(3AA)(3AB) inserted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\), ss. 5, 17\(1\); S.R. 2011/159, art. 2](#)

### [<sup>F15</sup>Practice directions

**9A.**—(1) Industrial tribunal procedure regulations may include provision—

- (a) enabling the President to make directions about the procedure of industrial tribunals, including directions about the exercise by tribunals of powers under such regulations;
- (b) for securing compliance with such directions; and
- (c) about the publication of such directions.

(2) Industrial tribunal procedure regulations may, instead of providing for any matter, refer to provision made or to be made about that matter by directions made by the President.

(3) In this Article, “the President” means the President of the Industrial Tribunals and the Fair Employment Tribunal.]

- F15** 2003 NI 15

### Procedure in contract cases

**10.**—(1) Where in proceedings brought by virtue of Article 5 an industrial tribunal finds that the whole or part of a sum claimed in the proceedings is due, the tribunal shall order the respondent to the proceedings to pay the amount which it finds due.

(2) An order under Article 5 may provide that an industrial tribunal shall not in proceedings in respect of a claim, or a number of claims relating to the same contract, order the payment of an amount exceeding such sum as may be specified in the order as the maximum amount which an industrial tribunal may order to be paid in relation to a claim or in relation to a contract.

(3) An order under Article 5 may include provisions—

- (a) as to the manner in which and time within which proceedings are to be brought by virtue of that Article, and
- (b) modifying any other statutory provision.

### Pre-hearing reviews and preliminary matters

**11.**—(1) Industrial tribunal procedure regulations may include provision—

- <sup>F16</sup>(a) for authorising the carrying-out by an industrial tribunal of a preliminary consideration of any proceedings before it (a “pre-hearing review”), and
- (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the regulations.

(2) Such regulations may in particular include provision—

- (a) for authorising any tribunal carrying out a pre-hearing review under the regulations to make, in circumstances specified in the regulations, an order requiring a party to the proceedings in question, if he wishes to continue to participate in those proceedings, to pay a deposit of an amount not exceeding<sup>F17</sup> £500], and

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(b) for prescribing—

- (i) the manner in which the amount of any such deposit is to be determined in any particular case,
- (ii) the consequences of non-payment of any such deposit, and
- (iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it or be paid over to another party to the proceedings.

[<sup>F18</sup>(2A) Regulations under paragraph (1)(b), so far as relating to striking out, may not provide for striking out on a ground which does not apply outside a pre-hearing review.]

(3) The Department may by order substitute for the sum specified in paragraph (2)(a) such other sum as is specified in the order.

(4) Industrial tribunal procedure regulations may also include provision for authorising an industrial tribunal to hear and determine[<sup>F19</sup> separately any preliminary issue of a description prescribed by the regulations which is raised by any case.]

(5) Where a complaint is presented to an industrial tribunal under Article 145 of the Employment Rights Order (unfair dismissal) and it appears to the tribunal that the dismissal to which the complaint relates is one in respect of which (as being unlawful discrimination[<sup>F20</sup> or harassment] within the meaning of the[<sup>F21</sup> Fair Employment and Treatment (Northern Ireland) Order 1998]

- (a) a complaint could be made to the Fair Employment Tribunal for Northern Ireland under[<sup>F21</sup> Part VI of the Fair Employment and Treatment (Northern Ireland) Order 1998], or
- (b) such a complaint has been made, but the proceedings[<sup>F21</sup> under the Fair Employment and Treatment (Northern Ireland) Order 1998] have not been disposed of,

the tribunal shall not proceed further under the Employment Rights Order in relation to the complaint unless all proceedings which can be taken[<sup>F21</sup> under the Fair Employment and Treatment (Northern Ireland) Order 1998] in respect of the dismissal have been disposed of.

**F16** prosp. subst. by 2003 NI 15

**F17** SR 2004/157

**F18** 2003 NI 15

**F19** 1998 NI 8

**F20** SR 2003/341

**F21** 1998 NI 21

## [<sup>F22</sup>National security

**12.—**(1) If on a complaint under—

[ Article 74, 77A or 77B of the Employment Rights Order (inducements and detriments in <sup>F23</sup>(a) respect of trade union membership etc.),]

(b) Article 145 of that Order (unfair dismissal),

it is shown that the action complained of was taken for the purpose of safeguarding national security, the industrial tribunal shall dismiss the complaint.

(2) Industrial tribunal procedure regulations may make provision about the composition of the tribunal (including provision disapplying or modifying Article 6) for the purposes of proceedings in relation to which—

- (a) a direction is given under paragraph (3), or
- (b) an order is made under paragraph (4).

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- (3) A direction may be given under this paragraph by the Secretary of State if—
- (a) it relates to particular Crown employment proceedings, and
  - (b) the Secretary of State considers it expedient in the interests of national security.
- (4) An order may be made under this paragraph by the President of the Industrial Tribunals and the Fair Employment Tribunal in relation to particular proceedings if he considers it expedient in the interests of national security.
- (5) Industrial tribunal procedure regulations may make provision enabling the Secretary of State, if he considers it expedient in the interests of national security—
- (a) to direct a tribunal to sit in private for all or part of particular Crown employment proceedings;
  - (b) to direct a tribunal to exclude the applicant from all or part of particular Crown employment proceedings;
  - (c) to direct a tribunal to exclude the applicant's representatives from all or part of particular Crown employment proceedings;
  - (d) to direct a tribunal to take steps to conceal the identity of a particular witness in particular Crown employment proceedings;
  - (e) to direct a tribunal to take steps to keep secret all or part of the reasons for its decision in particular Crown employment proceedings.
- [
- <sup>F24</sup>(6) Industrial tribunal procedure regulations may enable a tribunal, if it considers it expedient in the interests of national security, to do in relation to particular proceedings before it anything of a kind which, by virtue of paragraph (5), industrial tribunal procedure regulations may enable the Secretary of State to direct a tribunal to do in relation to particular Crown employment proceedings.]
- (7) In relation to cases where a person has been excluded by virtue of paragraph (5)(b) or (c) or (6), industrial tribunal procedure regulations may make provision—
- (a) for the appointment by the Attorney General for Northern Ireland of a person to represent the interests of the applicant,
  - (b) about the publication and registration of reasons for the tribunal's decision;
  - (c) permitting an excluded person to make a statement to the tribunal before the commencement of the proceedings, or the part of the proceedings from which he is excluded.
- (8) Proceedings are Crown employment proceedings for the purposes of this Article if the employment to which the complaint relates—
- (a) is Crown employment, or
  - (b) is connected with the performance of functions on behalf of the Crown.]

<b>F22</b>	<a href="#">1999 NI 9</a>
<b>F23</b>	<a href="#">2004 NI 19</a>
<b>F24</b>	<a href="#">2004 NI 19</a>

[<sup>F25</sup>**Confidential information**

**12A.**—(1) Industrial tribunal procedure regulations may enable an industrial tribunal to sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

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- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision,
  - (b) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
  - (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992, cause substantial injury to any undertaking of his or in which he works.
- (2) The reference in paragraph (1)(c) to any undertaking of a person or in which he works shall be construed, in relation to a person in Crown employment, as a reference to the national interest.]

**F25** 1999 NI 9

### [<sup>F26</sup>Restriction of publicity in cases involving national security

**12B.**—(1) This Article applies where a tribunal has been directed under Article 12(5) or has determined under Article 12(6)—

- (a) to take steps to conceal the identity of a particular witness, or
  - (b) to take steps to keep secret all or part of the reasons for its decision.
- (2) It is an offence to publish—
- (a) anything likely to lead to the identification of the witness, or
  - (b) the reasons for the tribunal's decision or the part of its reasons which it is directed or has determined to keep secret.
- (3) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Where a person is charged with an offence under this Article it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication in question was of, or included, the matter in question.
- (5) A reference in this Article to publication includes a reference to inclusion in a programme which is included in a programme service, within the meaning of the Broadcasting Act 1990.]

**F26** 1999 NI 9

### Restriction of publicity <sup>F27</sup> . . .

**13.**—[<sup>F28</sup>(1) Industrial tribunal procedure regulations may include provision for cases to which this paragraph applies enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

- (1A) Paragraph (1) applies to cases—
- (a) involving allegations of sexual misconduct;
  - (b) where the disclosure of identifying matter would be likely to cause—
    - (i) an individual (whether a party to the proceedings or not) to be subjected to harassment;
    - (ii) such an individual, or any property of such an individual, to be placed at risk of injury or damage; or

(c) where, in the opinion of the tribunal, the interests of justice otherwise require.

(1B) Industrial tribunal procedure regulations may include provision, for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation.]

(2) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order—

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
- (b) in the case of publication in any other form, the person publishing the matter, and
- (c) in the case of matter included in a relevant programme—

- (i) any body corporate engaged in providing the service in which the programme is included, and
- (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where a person is charged with an offence under paragraph (2) it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the matter in question.

(4) In this Article—

“identifying matter”, in relation to a person, means any matter likely to lead members of the public to identify [<sup>F29</sup>a party to the proceedings in question or such other persons (if any) as may be named in the restricted reporting order],

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,

“restricted reporting order” means an order—

- (a) made in exercise of a power conferred by regulations made by virtue of this Article, and
- (b) prohibiting the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland,

“sexual misconduct” means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed,

“sexual offence” means—

- (a) rape, aiding, abetting, counselling or procuring rape or attempted rape, incitement to rape, conspiracy to rape or burglary with intent to rape;
- (b) any offence under any of the following statutory provisions, namely—
  - (i) section 52,<sup>F30</sup> . . . of the Offences Against the Person Act 1861;
  - (ii) section 3, 4 or 5 of the Criminal Law Amendment Act 1885;
  - (iii) section 1 or 2 of the Punishment of Incest Act 1908;
  - (iv) section 22 of the Children and Young Persons Act (Northern Ireland) 1968;
  - (v) Article 9 of the Criminal Justice (Northern Ireland) Order 1980;

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- (vi) Article 122(1)(a) or (b) or 123 of the Mental Health (Northern Ireland) Order 1986;
  - (vii) <sup>F30</sup>Article 19, 20 or 21 of the Criminal Justice (Northern Ireland) Order 2003;]
  - (viii) <sup>F31</sup>any provision of Part 2, 3 or 4 of the Sexual Offences (Northern Ireland) Order 2008, or Article 65, 66, 67, 70, 71 or 74 of that Order;]
- (c) any attempt to commit any of the offences mentioned in sub-paragraph (a) or (b);  
 “written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

- F27** Words in art. 13 heading omitted (3.4.2011) by virtue of [Employment Act \(Northern Ireland\) 2011](#) (c. 13), **ss. 6(2)**, 17(1); S.R. 2011/159, **art. 2**
- F28** Art. 13(1)(1A)(1B) substituted (3.4.2011) for art. 13(1) by [Employment Act \(Northern Ireland\) 2011](#) (c. 13), **ss. 6(3)**, 17(1); S.R. 2011/159, **art. 2**
- F29** Art. 13(4): words in definition of "identifying matter" substituted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011](#) (c. 13), **ss. 6(4)**, 17(1); S.R. 2011/159, **art. 2**
- F30** 2003 NI 13
- F31** By the [Sexual Offences \(Northern Ireland\) Order 2008](#) (S.I. 2008/1769 (N.I. 2)), arts. 1(3), 81, **Sch. 1 para. 25**; S.R. 2008/510, **art. 2** it is provided that in art. 13(5)(b) in the definition of "sexual offence", after para. (vii) insert (2.2.2009) para. (viii)

### Restriction of publicity in disability cases

**14.**—(1) This Article applies to proceedings on a complaint under<sup>F32</sup> section 17A or 25(8)] of the Disability Discrimination Act 1995 in which evidence of a personal nature is likely to be heard by the industrial tribunal hearing the complaint.

(2) Industrial tribunal procedure regulations may include provision in relation to proceedings to which this Article applies for—

- (a) enabling an industrial tribunal, on the application of the complainant or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal, and
- (b) where a restricted reporting order is made in relation to a complaint which is being dealt with by the tribunal together with any other proceedings, enabling the tribunal to direct that the order is to apply also in relation to those other proceedings or such part of them as the tribunal may direct.

(3) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order—

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
- (b) in the case of publication in any other form, the person publishing the matter, and
- (c) in the case of matter included in a relevant programme—
  - (i) any body corporate engaged in providing the service in which the programme is included, and
  - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where a person is charged with an offence under paragraph (3), it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the matter in question.

(5) In this Article—

“evidence of a personal nature” means any evidence of a medical, or other intimate, nature which might reasonably be assumed to be likely to cause significant embarrassment to the complainant if reported,

“identifying matter” means any matter likely to lead members of the public to identify the complainant or such other persons (if any) as may be named in the order,

“promulgation” has such meaning as may be prescribed by regulations made by virtue of this Article,

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,

“restricted reporting order” means an order—

- (a) made in exercise of a power conferred by regulations made by virtue of this Article, and
- (b) prohibiting the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland, and

“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

F32 SR 2004/55

## Costs and expenses

15.—<sup>F33</sup>(1) Industrial tribunal procedure regulations may include provision—

- (a) for the award of costs or expenses;
- (b) for the award of any allowances payable under Article 7(2)(c) or (3).

(1A) Regulations under paragraph (1) may include provision authorising an industrial tribunal to have regard to a person's ability to pay when considering the making of an award against him under such regulations.

(1B) Industrial tribunal procedure regulations may include provision for authorising an industrial tribunal—

- (a) to disallow all or part of the costs or expenses of a representative of a party to proceedings before it by reason of that representative's conduct of the proceedings;
- (b) to order a representative of a party to proceedings before it to meet all or part of the costs or expenses incurred by a party by reason of the representative's conduct of the proceedings;
- (c) to order a representative of a party to proceedings before it to meet all or part of any allowances payable by the Department under Article 7(2)(c) or (3) by reason of the representative's conduct of the proceedings.

(1C) Industrial tribunal procedure regulations may also include provision for taxing or otherwise settling the costs or expenses referred to in paragraph (1)(a) or (1B)(b) (and, in particular for enabling such costs to be taxed in the county court).]

(2) In relation to proceedings under Article 145 of the Employment Rights Order (unfair dismissal)—

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- (a) where the employee has expressed a wish to be reinstated or re-engaged which has been communicated to the employer at least seven days before the hearing of the complaint,<sup>F34</sup> . . .

*Sub#para. (b) rep. by 1999 NI 9*

industrial tribunal procedure regulations shall include provision for requiring the employer to pay the costs or expenses of any postponement or adjournment of the hearing caused by his failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the complainant was dismissed<sup>F34</sup> . . . or of comparable or suitable employment.

**F33** 2003 NI 15

**F34** 1999 NI 9

### [<sup>F35</sup>Payments in respect of preparation time

**15A.**—(1) Industrial tribunal procedure regulations may include provision for authorising an industrial tribunal to order a party to proceedings before it to make a payment to any other party in respect of time spent in preparing that other party's case.

(2) Regulations under paragraph (1) may include provision authorising an industrial tribunal to have regard to a person's ability to pay when considering the making of an order against him under such regulations.

(3) If industrial tribunal procedure regulations include—

- (a) provision of the kind mentioned in paragraph (1); and
- (b) provision of the kind mentioned in Article 15(1)(a),

they shall also include provision to prevent an industrial tribunal exercising its powers under both kinds of provision in favour of the same person in the same proceedings.]

**F35** 2003 NI 15

### Interest

**16.**—(1) The Department may by order made with the approval of the Department of Finance and Personnel provide that sums payable in pursuance of decisions of industrial tribunals shall carry interest at such rate and between such times as may be prescribed by the order.

(2) Any interest due by virtue of such an order shall be recoverable as a sum payable in pursuance of the decision.

(3) The power conferred by paragraph (1) includes power—

- (a) to specify cases or circumstances in which interest is not payable,
- (b) to provide that interest is payable only on sums exceeding a specified amount or falling between specified amounts,
- (c) to make provision for the manner in which and the periods by reference to which interest is to be calculated and paid,
- (d) to provide that any statutory provision—
  - (i) does or does not apply in relation to interest payable by virtue of paragraph (1), or
  - (ii) applies to it with such modifications as may be specified in the order,
- (e) to make provision for cases where sums are payable in pursuance of decisions or awards made on appeal from industrial tribunals.



(4) In particular, an order under paragraph (1) may provide that the rate of interest shall be the rate from time to time in force in relation to interest on amounts awarded by decree in the county court.

## Enforcement

17.—(1) Any sum payable in pursuance of a decision of an industrial tribunal which has been registered in accordance with industrial tribunal procedure regulations [<sup>F36</sup>shall be enforceable as if it were payable under an order of the county court.]

(2) In this Article a reference to a decision of an industrial tribunal—

- (a) does not include a decision which, on being reviewed, has been revoked by the tribunal, and
- (b) in relation to a decision which on being reviewed, has been varied by the tribunal, shall be construed as a reference to the decision as so varied.

**F36** Words in art. 17(1) substituted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\), ss. 7, 17\(1\); S.R. 2011/159, art. 2](#)

## *Recoupment of social security benefits*

### Power to provide for recoupment of benefits

18.—(1) This Article applies to payments which are the subject of proceedings before industrial tribunals and which are—

- (a) payments of wages or compensation for loss of wages,
- (b) payments by employers to employees under any of the following provisions of the Employment Rights Order—
  - (i) Part V (guarantee payments);
  - (ii) Part VI (protection from detriment, etc. in employment);
  - (iii) Part VII (time off work);
  - (iv) Part VIII (suspension from work);
  - (v) Article 125 (written statement of reasons for dismissal);
  - (vi) Part XI (unfair dismissal);
  - (vii) Article 220 (handling of redundancies); or
- (c) payments by employers to employees of a nature similar to, or for a purpose corresponding to the purpose of, payments within sub-paragraph (b),

and to payments of remuneration under a protective award under Article 217 of the Employment Rights Order.

(2) The Department and the Department of Health and Social Services (acting jointly) may by regulations make with respect to payments to which this Article applies provision for any or all of the purposes specified in paragraph (3).

(3) The purposes referred to in paragraph (2) are—

<sup>F37</sup>(a) enabling the Department of Health and Social Services to recover from an employer, by way of total or partial recoupment of jobseeker's allowance [<sup>F38</sup>, income support or income-related employment and support allowance]—

- (i) a sum not exceeding the amount of the prescribed element of the monetary award, or

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- (ii) in the case of a protective award, the amount of the remuneration,
  - (b) requiring or authorising an industrial tribunal to order the payment of such a sum, by way of total or partial recoupment of [<sup>F39</sup>jobseeker's allowance, income support or income-related employment and support allowance], to the Department of Health and Social Services instead of to an employee, and
  - <sup>F40</sup>(c) requiring an industrial tribunal to order the payment to an employee of only the excess of the prescribed element of the monetary award over the amount of any jobseeker's allowance [<sup>F41</sup>, income support or income-related employment and support allowance] shown to the tribunal to have been paid to the employee and enabling the Department of Health and Social Services to recover from the employer, by way of total or partial recoupment of the benefit, a sum not exceeding that amount.
- (4) Regulations under this Article may—
- (a) confer powers and impose duties on industrial tribunals or <sup>F42</sup> . . . other persons,
  - (b) impose on an employer to whom a monetary award or protective award relates a duty—
    - (i) to furnish particulars connected with the award, and
    - (ii) to suspend payments in pursuance of the award during any period prescribed by the regulations,
  - (c) provide for an employer who pays a sum to the Department of Health and Social Services in pursuance of this Article to be relieved from any liability to pay the sum to another person,
  - <sup>F43</sup>(cc) provide for the determination by the Department of Health and Social Services of any issue arising as to the total or partial recoupment in pursuance of the regulations of a jobseeker's allowance, unemployment benefit [<sup>F44</sup>, income support or income-related employment and support allowance],
  - <sup>F45</sup>(d) confer on an employee a right of appeal to an appeal tribunal constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998 against any decision of the Department of Health and Social Services on any such issue, and]
  - <sup>F46</sup>(e) provide for the proof in proceedings before industrial tribunals (whether by certificate or in any other manner) of any amount of jobseeker's allowance [<sup>F47</sup>, income support or income-related employment and support allowance] paid to an employee.

**F37** By Welfare Reform Act (Northern Ireland) 2010 (c. 13), ss. 34(1), 36(2), **Sch. 4 Pt. 1** (with s. 9(3)) it is provided that in art. 18(3)(a) the words "or income support" are repealed (prosp.)

**F38** Words in art. 18(3)(a) substituted (1.7.2008 for certain purposes, otherwise 27.10.2008) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), ss. 28(1), 60(1), **Sch. 3 para. 9(2)(a)**; S.R. 2008/276, **art. 2(2)(c)**, Sch. Pt. 1

**F39** Words in art. 18(3)(b) substituted (1.7.2008 for certain purposes, otherwise 27.10.2008) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), ss. 28(1), 60(1), **Sch. 3 para. 9(2)(b)**; S.R. 2008/276, **art. 2(2)(c)**, Sch. Pt. 1

**F40** By Welfare Reform Act (Northern Ireland) 2010 (c. 13), ss. 34(1), 36(2), **Sch. 4 Pt. 1** (with s. 9(3)) it is provided that in art. 18(3)(c) the words "or income support" are repealed (prosp.)

**F41** Words in art. 18(3)(c) substituted (1.7.2008 for certain purposes, otherwise 27.10.2008) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), ss. 28(1), 60(1), **Sch. 3 para. 9(2)(a)**; S.R. 2008/276, **art. 2(2)(c)**, Sch. Pt. 1

**F42** 1998 NI 10

**F43** 1998 NI 10

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- F44** Words in art. 18(4)(cc) substituted (1.7.2008 for certain purposes, otherwise 27.10.2008) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\), ss. 28\(1\), 60\(1\), Sch. 3 para. 9\(2\)\(a\)](#); S.R. 2008/276, [art. 2\(2\)\(c\)](#), Sch. Pt. 1
- F45** By [Welfare Reform Act \(Northern Ireland\) 2010 \(c. 13\), ss. 34\(1\), 36\(2\), Sch. 4 Pt. 1](#) (with s. 9(3)) it is provided that in art. 18(4)(d) the words "or of income support" are repealed (prosp.)
- F46** By [Welfare Reform Act \(Northern Ireland\) 2010 \(c. 13\), ss. 34\(1\), 36\(2\), Sch. 4 Pt. 1](#) (with s. 9(3)) it is provided that in art. 18(4)(e) the words "or income support" are repealed (prosp.)
- F47** Words in art. 18(4)(e) substituted (1.7.2008 for certain purposes, otherwise 27.10.2008) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\), ss. 28\(1\), 60\(1\), Sch. 3 para. 9\(2\)\(a\)](#); S.R. 2008/276, [art. 2\(2\)\(c\)](#), Sch. Pt. 1

### Recoupment: further provisions

**19.**—(1) Where in pursuance of any regulations under Article 18 a sum has been recovered by or paid to the Department of Health and Social Services by way of total or partial recoupment of jobseeker's allowance [<sup>F48</sup>, income support or income-related employment and support allowance]—

- (a) no sum shall be recoverable under Part III or V of the Social Security Administration Act (Northern Ireland) 1992, and
- (b) no abatement, payment or reduction shall be made by reference to the jobseeker's allowance [<sup>F48</sup>, income support or income-related employment and support allowance] recouped.

(2) Any amount found to have been duly recovered by or paid to the Department of Health and Social Services in pursuance of regulations under Article 18 by way of total or partial recoupment of 1 jobseeker's allowance shall be paid into the Northern Ireland National Insurance Fund.

(3) In Article 18—

“monetary award” means the amount which is awarded, or ordered to be paid, to the employee by the tribunal or would be so awarded or ordered apart from any provision of regulations under that Article, and

“the prescribed element”, in relation to any monetary award, means so much of that award as is attributable to such matters as may be prescribed by regulations under that Article.

(4) In Article 18 “income-based jobseeker's allowance” has the same meaning as in the Jobseekers (Northern Ireland) Order 1995.

[<sup>F49</sup>(5) In this Article and Article 18 “income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007 (employment and support allowance).]

- F48** Words in [art. 19\(1\)](#) substituted (1.7.2008 for certain purposes, otherwise 27.10.2008) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\), ss. 28\(1\), 60\(1\), Sch. 3 para. 9\(3\)](#); S.R. 2008/276, [art. 2\(2\)\(c\)](#), Sch. Pt. 1
- F49** [Art. 19\(5\)](#) added (1.7.2008 for certain purposes, otherwise 27.10.2008) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\), ss. 28\(1\), 60\(1\), Sch. 3 para. 9\(4\)](#); S.R. 2008/276, [art. 2\(2\)\(c\)](#), Sch. Pt. 1

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## Conciliation

### Conciliation

**20.**—(1) This Article applies in the case of industrial tribunal proceedings and claims which could be the subject of industrial tribunal proceedings—

(a) under—

(i) section 2(1) of the Equal Pay Act (Northern Ireland) 1970,

(ii) Article 63 of the Sex Discrimination (Northern Ireland) Order 1976, or

(iii) [<sup>F50</sup>section 17A or 25(8)] of the Disability Discrimination Act 1995;<sup>F51</sup> . . .

[<sup>F52</sup>(iv)] [<sup>F52</sup>Article 52 of the Race Relations (Northern Ireland) Order 1997;]<sup>F53</sup> . . .

[<sup>F51</sup>(v) regulation 34 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.]

[<sup>F54</sup>or

(vi) regulation 41 of the Employment Equality (Age) Regulations (Northern Ireland) 2006.]

(b) arising out of a contravention, or alleged contravention, of Article 31, 35<sup>F55</sup>, 38 or 60] of the Trade Union and Labour Relations (Northern Ireland) Order 1995;

(c) [<sup>F56</sup>under, or] arising out of a contravention, or alleged contravention, of any of the following provisions of the Employment Rights Order—

(i) Article 26 or 27 (access to employment);

(ii) Article 40 (itemised pay statement);

(iii) Article 45,47,50(1) or 53(1) (protection of wages);

(iv) Article 60 (guarantee payments);

(v) Part VI (protection from detriment, etc. in employment);

(vi) Part VII (time off work);

(vii) Part VIII (suspension from work);

[<sup>F56</sup>(viii) Article 112G(1) or 112H(1)(b) (flexible working);]

(viii) Article 124 (written statement of reasons for dismissal);

(ix) Part XI (unfair dismissal);

[<sup>F55</sup>(ixa) Article 170 (redundancy payment);]

(x) Article 216 or 218 (handling of redundancies and protective awards);

[<sup>F57</sup>Article 112(1) of the Employment Rights (Northern Ireland) Order 1996]

[<sup>F58</sup>(cc)] [<sup>F58</sup>under or by virtue of section 11, 18, 20(1)(b) or 24 of the National Minimum Wage Act 1998;]

(d) which are proceedings in respect of which an industrial tribunal has jurisdiction by virtue of Article 5,<sup>F59</sup> . . .

(e) [<sup>F56</sup>under, or] arising out of a contravention, or alleged contravention, of a provision specified by an order under paragraph (8)(b) as a provision to which this paragraph applies<sup>F60</sup> . . .

[<sup>F59</sup>(f) under regulation 30 of the Working Time Regulation (Northern Ireland) 1998<sup>F61</sup> . . . ]

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- [<sup>F60</sup>(g) under regulation 27 or 32 of the Transnational Information and Consultation of Employees Regulations 1999<sup>F62</sup> . . . ]
  - [<sup>F61</sup>(h) arising out of a contravention, or alleged contravention, [<sup>F63</sup> of paragraph (1) of regulation 5 or paragraph (2) of regulation 7] of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000. [<sup>F62</sup> or]]
  - [<sup>F62</sup>(i) arising out of a contravention, or alleged contravention, of regulation 3 or 6(2) of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002; or
    - (j) under regulation 9 of those Regulations.]
  - [<sup>F64</sup>(k) under regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003]
  - [<sup>F65</sup>(l) under regulation 19 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004. <sup>F66</sup> . . . ]
  - [<sup>F67</sup>(m)] [<sup>F67</sup>under regulation 41 or 45 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004.]<sup>F68</sup> . . .
  - [<sup>F66</sup>(n) under regulation 29 or 33 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005.]
  - [<sup>F69</sup>, <sup>F70</sup> . . .
    - (o) under paragraph 4 or 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006.]<sup>F71F72</sup> . . .
    - (p) under regulation 45 or 51 of the Companies (Cross-Border Mergers) Regulations 2007][<sup>F73</sup>, or
    - (q) under regulation 17 of the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008][<sup>F74</sup>, <sup>F75</sup> . . .
    - (s) under regulation 28 or 32 of the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I.2009/2402).][<sup>F76</sup>, or
    - (t) arising out of a contravention, or alleged contravention of regulation 5, 12, 13 or 17(2) of the Agency Workers Regulations (Northern Ireland) 2011.]
- (2) Where an application has been presented to an industrial tribunal, and a copy of it has been sent to the Agency, it is the duty of the Agency—
- (a) if it is requested to do so by the person by whom and the person against whom the proceedings are brought, or
  - (b) if, in the absence of any such request, the Agency considers that it could act under this paragraph with a reasonable prospect of success,
- to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.
- (2A) <sup>F77</sup> . . . . .
- (3) Where at any time—
- (a) a person claims that action has been taken in respect of which proceedings could be brought by him before an industrial tribunal, but
  - (b) before any application relating to that action has been presented by him a request is made to the Agency (whether by that person or by the person against whom the proceedings could be instituted) to make its services available to them,

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the Agency [<sup>F78</sup>may endeavour to promote a settlement between the parties without proceedings being instituted.]

(4) Where a person who has presented a complaint to an industrial tribunal under Article 145 of the Employment Rights Order (unfair dismissal) has ceased to be employed by the employer against whom the complaint was made, the Agency shall (for the purpose of promoting a settlement of the complaint in accordance with paragraph (2)) in particular—

- (a) seek to promote the reinstatement or re-engagement of the complainant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the Agency to be equitable, and
- (b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the Agency to act, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.

[<sup>F79</sup>(5) Where the Agency acts pursuant to paragraph (3) in a case where the person claiming as specified in sub-paragraph (a) of that paragraph has ceased to be employed by the employer and the proceedings which he claims could be brought by him are proceedings under Article 145 of the Employment Rights Order, the Agency may in particular—

- (a) seek to promote the reinstatement or re-engagement of that person by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the Agency to be equitable, or
- (b) where the person does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to that person.]

(6) In proceeding under this Article the Agency shall, where appropriate, have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

(7) Anything communicated to the Agency in connection with the performance of its functions under this Article shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to the Agency.

(8) The Department may by order—

- (a) direct that further provisions of the Employment Rights Order be added to the list in paragraph (1)(c),
- (b) specify any other statutory provision as a provision to which paragraph (1)(e) applies.

(9) This Article does not apply in respect of any period during which, by virtue of Article 11(5), an industrial tribunal may not proceed under the Employment Rights Order.

**F50** SR 2004/55

**F51** SR 2003/497

**F52** 1997 NI 6

**F53** Word in art. 20(1)(a)(iv) repealed (1.10.2006) by S.R. 2006/261, reg. 53, Sch. 7 para. 4(a), **Sch. 8(1)** (with reg. 50)

**F54** Art. 20(1)(a)(vi) and preceding word inserted (1.10.2006) by S.R. 2006/261, reg. 53(1), **Sch. 7 para. 4(b)** (with reg. 50)

**F55** 1998 NI 8

**F56** 2002 NI 2

**F57** SR 2001/37

**F58** 1998 c. 39

**F59** SR 1998/386

**F60** SI 1999/3323

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- F61** SR 2000/219
- F62** SR 2002/298
- F63** SR 2001/319
- F64** SI 2003/3049
- F65** SI 2004/1713
- F66** SR 2005/47
- F67** SR 2004/417
- F68** Word in art. 20(1)(m) omitted (6.4.2006) by virtue of S.R. 2006/48, reg. 17, **Sch. para. 9(a)**
- F69** Art. 20(1)(o) and preceding word inserted (6.4.2006) by S.R. 2006/48, reg. 17, **Sch. para. 9(b)**
- F70** Word in art. 20(1) omitted (15.12.2007) by virtue of Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 52, **Sch. 2 para. 11**
- F71** Art. 20(1)(p) and preceding word inserted (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 52, **Sch. 2 para. 11**
- F72** Word in art. 20(1)(o) omitted (1.10.2008) by virtue of Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (S.R. 2008/315), reg. 19, **Sch. 3 para. 1(a)**
- F73** Art. 20(1)(q) and preceding words inserted (1.10.2008) by Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (S.R. 2008/315), reg. 19, **Sch. 3 para. 1(b)**
- F74** Art. 20(1)(s) and preceding word inserted (1.10.2009) by virtue of European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 33** (with reg. 39)
- F75** Word in art. 20(1) omitted (5.12.2011) by virtue of Agency Workers Regulations (Northern Ireland) 2011 (S.R. 2011/350), reg. 23(2), **Sch. 2 para. 18(a)**
- F76** Art. 20(1)(t) and preceding word inserted (5.12.2011) by Agency Workers Regulations (Northern Ireland) 2011 (S.R. 2011/350), reg. 23(2), **Sch. 2 para. 18(b)**
- F77** Art. 20(2A) repealed (3.4.2011) by Employment Act (Northern Ireland) 2011 (c. 13), ss. 9(1), 16, 17(1), **Sch. 4; S.R. 2011/159, art. 2**
- F78** Words in art. 20(3) substituted (3.4.2011) by Employment Act (Northern Ireland) 2011 (c. 13), ss. 8(2), 17(1); S.R. 2011/159, **art. 2**
- F79** Art. 20(5) substituted (3.4.2011) by Employment Act (Northern Ireland) 2011 (c. 13), ss. 8(3), 17(1); S.R. 2011/159, **art. 2**

**Modifications etc. (not altering text)**

- C2** Art. 20 applied (6.4.2006 with application as mentioned in reg. 21(1) of the affecting Regulations) by S.I. 2006/246, regs. 12(7), 16(1), **Sch. 1 para. 10(3)(4)**  
 Art. 20 applied (6.4.2006 with application as mentioned in reg. 21(1)(2) of the affecting Regulations) by S.R. 2006/177, **regs. 12(7), 16(1)**

**Conciliation procedure**

21.—<sup>F80</sup>(1) Industrial tribunal procedure regulations shall include in relation to industrial tribunal proceedings in the case of which any statutory provision makes provision for conciliation—

- (a) provisions requiring a copy of the application by which the proceedings are instituted, and a copy of any notice relating to it which is lodged by or on behalf of the person against whom the proceedings are brought, to be sent to the Agency,<sup>F81</sup> and]
- (b) provisions securing that the applicant and the person against whom the proceedings are brought are notified that the services of the Agency are available to them,<sup>F82</sup> . . .

Sub#para. (c) rep. by 2003 NI 15

(2) <sup>F83</sup> .....

- F80** 2003 NI 15
- F81** 2003 NI 15

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**F82** 2003 NI 15

**F83** Art. 21(2) repealed (3.4.2011) by Employment Act (Northern Ireland) 2011 (c. 13), ss. 9(2), 16, 17(1), Sch. 4; S.R. 2011/159, art. 2

**[<sup>F84</sup>C Conciliation: recovery of sums payable under compromises**

**21A.**—(1) Paragraphs (3) to (6) apply if—

- (a) the Agency—
  - (i) has taken action under Article 20 in a case, and
  - (ii) issues a certificate in writing stating that a compromise has been reached in the case, and
- (b) all of the terms of the compromise are set out—
  - (i) in a single relevant document, or
  - (ii) in a combination of two or more relevant documents.

(2) A document is a “relevant document” for the purposes of paragraph (1) if—

- (a) it is the certificate, or
- (b) it is a document that is referred to in the certificate or that is referred to in a document that is within this sub-paragraph.

(3) Any sum payable by a person under the terms of the compromise (a “compromise sum”) shall, subject to paragraphs (4) to (7), be recoverable as if the sum were payable under an order of the county court.

(4) A compromise sum is not recoverable under paragraph (3) if—

- (a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from him under the general law of contract, and
- (b) that declaration is made.

(5) If county court rules so provide, a compromise sum is not recoverable under paragraph (3) during the period—

- (a) beginning with the issue of the certificate, and
- (b) ending at such time as may be specified in, or determined under, county court rules.

(6) If the terms of the compromise provide for the person to whom a compromise sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by him under paragraph (3) only if a county court so orders.

(7) Once an application has been made for a declaration under paragraph (4) in relation to a sum, no further reliance may be placed on paragraph (3) for the recovery of the sum while the application is pending.

(8) An application for a declaration under paragraph (4) may be made to an industrial tribunal or a county court.

(9) Industrial tribunal procedure regulations may (in particular) make provision as to the time within which an application to an industrial tribunal for a declaration under paragraph (4) is to be made.

(10) County court rules may make provision as to—

- (a) the time within which an application to a county court for a declaration under paragraph (4) is to be made;
- (b) when an application (whether made to a county court or an industrial tribunal) for a declaration under paragraph (4) is pending for the purposes of paragraph (7).



(11) Nothing in this Article shall be taken to prejudice any rights or remedies that a person has apart from this Article.

(12) In this Article “compromise” (except in the phrase “compromise sum”) means a settlement, or compromise, to avoid proceedings or bring proceedings to an end.]

**F84** Art. 21A inserted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\), ss. 10, 17\(1\); S.R. 2011/159, art. 2](#)

### *Appeals from industrial tribunals*

#### **Appeals from industrial tribunals**

**22.**—(1) A party to proceedings before an industrial tribunal who is dissatisfied in point of law with a decision of the tribunal may, according as rules of court may provide, either—

- (a) appeal therefrom to the Court of Appeal, or
- (b) require the tribunal to state and sign a case for the opinion of the Court of Appeal.

(2) Rules of court may provide for authorising or requiring the tribunal to state, in the form of a special case for the decision of the Court of Appeal, any question of law arising in the proceedings.

### *Supplementary*

#### **Crown employment**

**23.**—(1) This Order has effect in relation to Crown employment and persons in Crown employment as it has effect in relation to other employment and other employees.

(2) In this Order “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision.

(3) For the purposes of the application of this Order in relation to Crown employment in accordance with paragraph (1)—

- (a) references to an employee shall be construed as references to a person in Crown employment, and
  - (b) references to a contract of employment shall be construed as references to the terms of employment of a person in Crown employment.
- (4) Paragraph (1) applies to—
- (a) service as a member of the naval, military or air forces of the Crown, and
  - (b) employment by an association established for the purposes of Part VI of the Reserve Forces Act 1980;

but the Secretary of State may by order make any provision of this Order apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the order.

#### **Power to amend Order**

**24.** The Department may by order—

- (a) provide that any provision of this Order which is specified in the order shall not apply to persons, or to employments, of such classes as may be prescribed in the order, or

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- (b) provide that any provision of this Order shall apply to persons or employments of such classes as may be prescribed in the order subject to such exceptions and modifications as may be so prescribed.

### Regulations and orders

**25.**—(1) All regulations under this Order shall be subject to negative resolution.

(2) An order under Article<sup>F85</sup> . . . 23(4) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(3) An order under Article<sup>F85</sup> [5,] 6(4) or 24 shall—

- (a) be laid before the Assembly as soon as may be after it is made,
- (b) come into operation on such date as is specified in the order, and
- (c) cease to have effect upon the expiration of a period of 6 months from the date on which it came into operation unless, before the expiration of that period, it is approved by a resolution of the Assembly.

(4) All other orders made by the Department under this Order (other than an order under Part II of Schedule 2) shall be subject to negative resolution.

(5) Regulations and orders under this Order may contain incidental, supplementary and transitional provisions.

**F85** SI 1999/663

*Article 26—Amendments*

### Transitional provisions, savings and transitory provisions

**27.** Schedule 2 (transitional provisions, savings and transitory provisions) shall have effect.

*Article 28—Repeals*

## SCHEDULES

### *Schedule 1—Amendments*

#### SCHEDULE 2

Article 27.

#### TRANSITIONAL PROVISIONS, SAVINGS AND TRANSITORY PROVISIONS

#### PART I

#### TRANSITIONAL PROVISIONS AND SAVINGS

1. The substitution of this Order for the provisions repealed or revoked by this Order does not affect the continuity of the law.

2. Anything done, or having effect as done, (including the making of subordinate legislation) under or for the purposes of any provision repealed or revoked by this Order has effect as if done under or for the purposes of any corresponding provision of this Order.

3. Any reference (express or implied) in this Order or any other statutory provision, or in any instrument or document, to a provision of this Order is (so far as the context permits) to be read as (according to the context) being or including in relation to times, circumstances and purposes before the coming into operation of this Order a reference to the corresponding provision repealed or revoked by this Order.

4.—(1) Any reference (express or implied) in any statutory provision, or in any instrument or document, to a provision repealed or revoked by this Order is (so far as the context permits) to be read as (according to the context) being or including in relation to times, circumstances and purposes after the coming into operation of this Order a reference to the corresponding provision of this Order.

(2) In particular, where a power conferred by a statutory provision is expressed to be exercisable in relation to statutory provisions passed or made before the statutory provision conferring the power, the power is also exercisable in relation to provisions of this Order which reproduce such statutory provisions.

5. Paragraphs 1 to 4 have effect in place of section 29 of the Interpretation Act (Northern Ireland) 1954 (but are without prejudice to any other provision of that Act).

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## PART II

### TRANSITORY PROVISIONS

#### *Disability discrimination*

6.—(1) If section 62 of the Disability Discrimination Act 1995 has not come into force before the coming into operation of this Order, this Order shall have effect with the omission of Article 14 until the relevant commencement date.

- (2) The reference in sub-paragraph (1) to the relevant commencement date is a reference—
- (a) if an order has been made before the coming into operation of this Order appointing a date after that coming into operation as the day on which section 62 of the Disability Discrimination Act 1995 is to come into force, to the day so appointed, and
  - (b) otherwise, to such day as the Department may by order appoint<sup>F86</sup>.

(3) If paragraph 1 of Schedule 3 to the Disability Discrimination Act 1995 has not come into force before the coming into operation of this Order, this Order shall have effect with the omission of Article 20(1)(a)(iii) until the relevant commencement date.

- (4) The reference in sub-paragraph (3) to the relevant commencement date is a reference—
- (a) if an order has been made before the coming into operation of this Order appointing a day after that coming into operation as the day on which paragraph 1 of Schedule 3 to the Disability Discrimination Act 1995 is to come into force, to the day so appointed, and
  - (b) otherwise, to such day as the Department may by order appoint.

<b>F86</b> fully exercised with inclusion of art. 14 by SR 1997/36
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#### *Jobseeker's allowance*

7.—(1) If paragraph 1 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 has not come into operation before the coming into operation of this Order, this Order shall have effect until the relevant commencement date as if a reference to unemployment benefit were substituted for—

- (a) each of the references to jobseeker's allowance in paragraph (3) of Article 18.
  - (b) the second reference to jobseeker's allowance in paragraph (4) of that Article,
  - (c) the first reference to jobseeker's allowance in paragraph (1) of Article 19, and
  - (d) the reference to jobseeker's allowance in paragraph (2) of that Article.
- (2) The reference in sub-paragraph (1) to the relevant commencement date is a reference—
- (a) if an order has been made before the coming into operation of this Order appointing a day after that coming into operation as the day on which paragraph 1 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 is to come into force, to the day so appointed, and
  - (b) otherwise, to such day as the Department may by order appoint.

#### *Armed forces*

8.—(1) If Article 10 of the Industrial Relations (Northern Ireland) Order 1993 has not come into operation before the coming into operation of this Order, Article 23 shall have effect until the relevant commencement date as if for paragraph (4) there were substituted—

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“(4) Paragraph (1)—

- (a) does not apply to service as a member of the naval, military or air forces of the Crown, but
- (b) does apply to employment by an association established for the purposes of Part VI of the Reserve Forces Act 1980.”

(2) The reference in sub-paragraph (1) to the relevant commencement date is a reference—

- (a) if an order has been made before the coming into operation of this Order, appointing a day after that coming into operation as the day on which Article 10 of the Industrial Relations (Northern Ireland) Order 1993 is to come into operation, to the day so appointed, and
- (b) otherwise, to such day as the Department may by order appoint.

### *Schedule 3—Repeals*

**Status:**

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**Changes to legislation:**

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