

## SCHEDULES

### SCHEDULE 1

Article 16.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Sex Discrimination (Northern Ireland) Order 1976 (NI 15)*

1. For Article 77(4B) and (4C) substitute—

“(4B) A person is a relevant independent adviser for the purposes of paragraph (4A)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department of Economic Development.

(4BA) But a person is not a relevant independent adviser for the purposes of paragraph (4A)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party,
- (b) in the case of a person within paragraph (4B)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within paragraph (4B)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (4B) (d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4BB) In paragraph (4B)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(4BC) In paragraph (4B)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.

(4C) For the purposes of paragraph (4BA) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”.

##### *The Industrial Relations (Northern Ireland) Order 1992 (NI 5)*

2. After Article 84A (which is inserted by Article 8) insert—

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### **“Dismissal procedures agreements**

**84B.** The Agency may, in accordance with any dismissal procedures agreement (within the meaning of the Employment Rights (Northern Ireland) Order 1996), refer any matter to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).”.

3. In Article 107(2) after “1(2),” insert “84A(1)(b),”.

### *The Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12)*

4. In Article 141(2) (which specifies the provisions which do not apply to persons in crown employment), for “Article 61(3) (power of county court)” substitute “Article 61(4)(b) (power of tribunal”.

5.—(1) Article 146 (which restricts contracting out of the provisions of the Order) shall be amended as follows.

(2) In paragraph (4)(b) (which provides that a compromise agreement must relate to the particular complaint) for “complaint” substitute “proceedings”.

(3) For paragraphs (5) and (6) substitute—

“(5) A person is a relevant independent adviser for the purposes of paragraph (4)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department.

(5A) But a person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party,
- (b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within paragraph (5)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (5)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(5B) In paragraph (5)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(6) For the purposes of paragraph (5A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”.

*The Disability Discrimination Act 1995 (c. 50)*

6. In section 9 for subsections (4) and (5) substitute—

“(4) A person is a relevant independent adviser for the purposes of subsection (3)(a)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department of Economic Development.

(4A) But a person is not a relevant independent adviser for the purposes of subsection (3)

(a) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,
- (b) in the case of a person within subsection (4)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within subsection (4)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under subsection (4) (d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4B) In subsection (4)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(4C) In subsection (4)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.

(5) For the purposes of subsection (4A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”.

*The Employment Rights (Northern Ireland) Order 1996 (NI 16)*

7.—(1) Article 15 (which enables the making of regulations for preserving continuity of employment etc. in the case of a person who is dismissed and then reinstated or re-engaged in consequence of action to which paragraph (2) of the Article applies) shall be amended as follows.

(2) In paragraph (1)—

- (a) the words “, in consequence of action to which paragraph (2) applies,” shall cease to have effect,
- (b) for “or re-engaged” substitute “, re-engaged or otherwise re-employed”, and
- (c) at the end insert “in any circumstances prescribed by the regulations.”.

(3) Paragraphs (2) to (4) shall cease to have effect.

8. In Article 22(3) (which specifies the calculation date for a calculation for the purposes of Article 153 or 155 which involves the notion of a week’s pay), for “or 155” substitute “, 155 or 162A”.

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**9.** In Article 55 (which makes provision for complaints to an industrial tribunal in respect of unlawful deductions from wages etc.), at the end add—

“(5) No complaint shall be presented under this Article in respect of any deduction made in contravention of Article 60 of the Trade Union and Labour Relations Order (wrongful deduction of political fund contribution).”.

**10.** In Article 146(4) (which provides for the making of an award of compensation for unfair dismissal in accordance with Articles 152 to 162 where no order for reinstatement or order for re-engagement is made), for “162” substitute “162A”.

**11.** In Article 151(3)(a) (which provides for the making of an award of compensation for unfair dismissal in accordance with Articles 152 to 162 where a complainant is not reinstated or re-engaged in accordance with an order for reinstatement or an order for re-engagement), for “162” substitute “162A”.

**12.—(1)** Article 152 (which provides that an award of compensation for unfair dismissal shall consist of a basic award, a compensatory award and, in certain cases, a special award) shall be amended as follows.

(2) In paragraph (1)(b) (which provides that an award of compensation for unfair dismissal shall include a compensatory award calculated in accordance with Articles 157, 158 and 160 to 162) after “162” add “and 162A(1), (3) and (4)”.

(3) After paragraph (3) add—

“(4) Where Article 162A(2) applies, the award shall also include a supplementary award.”.

**13.** In Article 156 (which makes provision for the reduction of the amount of a basic award of compensation for unfair dismissal), after paragraph (3) insert—

“(3A) Where the complainant has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that award.”.

**14.** In Article 157(1) (which makes provision for the calculation of a compensatory award in accordance with that Article but subject to Articles 158, 160 and 161), for “and 161” substitute “to 162 and 162A(1), (3) and (4)”.

**15.—(1)** Article 245 (which restricts contracting out of the provisions of the Order) shall be amended as follows.

(2) In paragraph (3)(b) (which provides that a compromise agreement must relate to the particular complaint), for “complaint” substitute “proceedings”.

(3) For paragraph (4) substitute—

“(3A) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is a qualified lawyer;
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department.

- (3B) But a person is not a relevant independent adviser for the purposes of paragraph (3) (c) in relation to the employee or worker—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
  - (b) in the case of a person within paragraph (3A)(b) or (c), if the trade union or advice centre is the employer or an associated employer,
  - (c) in the case of a person within paragraph (3A)(c), if the employee or worker makes a payment for the advice received from him, or
  - (d) in the case of a person of a description specified in an order under paragraph (3A) (d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (4) In paragraph (3A)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.”.

*The Industrial Tribunals (Northern Ireland) Order 1996 (NI 18)*

**16.**—(1) Article 6 (which makes provision about the composition of an industrial tribunal) shall be amended as follows.

(2) In paragraph (1) (which provides that, subject to the following provisions of that Article, tribunal proceedings are to be heard by the chairman and other members), after “Subject to the following provisions of this Article” insert “and to Article 9(3A)”.

(3) In paragraph (6) (which makes provision for industrial tribunal procedure regulations to provide that any act required or authorised by the regulations to be done by a tribunal may be done by the chairman alone), for the words from “, in such circumstances” to “tribunal may” substitute “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”.

**17.** In Article 7(1) (which provides for the payment of remuneration to the President and Vice-President of the Industrial Tribunals and the Fair Employment Tribunal and to full-time chairmen), at the end add

“and

- (c) any person who is a legal officer appointed in accordance with such regulations.”.

**18.**—(1) Article 9 (which authorises the making of industrial tribunal procedure regulations) shall be amended as follows.

(2) Paragraph (3)(f)(i) (which authorises the making of regulations about the persons entitled to appear and be heard on behalf of parties in tribunal proceedings) shall cease to have effect.

(3) In paragraph (4) (which provides that it is an offence to fail to comply with certain requirements imposed by an industrial tribunal by virtue of regulations), after sub-paragraph (b) insert

“, or

- (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).”.

**19.** In Article 11(4) (which enables industrial tribunal procedure regulations to provide that issues relating to the entitlement to bring or contest proceedings may be heard and determined in advance), for the words “any issue” onwards substitute “separately any preliminary issue of a description prescribed by the regulations which is raised by any case.”.

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**20.** In Article 20(1)(b) (which specifies the provisions of the Trade Union and Labour Relations (Northern Ireland) Order 1995 in relation to which the provisions about conciliation apply), for “or 38” substitute “, 38 or 60”.

*The Race Relations (Northern Ireland) Order 1997 (NI 6)*

**21.** For Article 68(8) and (9) substitute—

“(8) A person is a relevant independent adviser for the purposes of paragraph (7)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department.

(8A) But a person is not a relevant independent adviser for the purposes of paragraph (7)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party,
- (b) in the case of a person within paragraph (8)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within paragraph (8)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (8)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(8B) In paragraph (8)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(8C) In paragraph (8)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.

(9) For the purposes of paragraph (8A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”.