

## SCHEDULES

### SCHEDULE 5

#### UNFAIR DISMISSAL OF STRIKING WORKERS

6. After Article 144 insert—

**“Participation in official industrial action**

**144A.**—(1) For the purposes of this Article an employee takes protected industrial action if he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of Article 97 of the Trade Union and Labour Relations Order is not actionable in tort.

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

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action, and
- (b) paragraph (3), (4) or (5) applies to the dismissal.

(3) This paragraph applies to a dismissal if it takes place within the period of eight weeks beginning with the day on which the employee started to take protected industrial action.

(4) This paragraph applies to a dismissal if—

- (a) it takes place after the end of that period, and
- (b) the employee had stopped taking protected industrial action before the end of that period.

(5) This paragraph applies to a dismissal if—

- (a) it takes place after the end of that period,
- (b) the employee had not stopped taking protected industrial action before the end of that period, and
- (c) the employer had not taken such procedural steps as would have been reasonable for the purposes of resolving the dispute to which the protected industrial action relates.

(6) In determining whether an employer has taken those steps regard shall be had, in particular, to—

- (a) whether the employer or a union had complied with procedures established by any applicable collective or other agreement;
- (b) whether the employer or a union offered or agreed to commence or resume negotiations after the start of the protected industrial action;
- (c) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that conciliation services be used;
- (d) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that mediation services be used in relation to procedures to be adopted for the purposes of resolving the dispute.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(7) In determining whether an employer has taken those steps no regard shall be had to the merits of the dispute.

(8) For the purposes of this Article no account shall be taken of the repudiation of any act by a trade union as mentioned in Article 21A of the Industrial Relations (Northern Ireland) Order 1992 in relation to anything which occurs before the end of the next working day (within the meaning of Article 143) after the day on which the repudiation takes place.

(9) In relation to a complaint under Article 145 that a dismissal was unfair by virtue of this Article—

- (a) no order shall be made under Article 147 (reinstatement or re-engagement) until after the conclusion of protected industrial action by any employee in relation to the relevant dispute,
- (b) regulations under Article 9 of the Industrial Tribunals (Northern Ireland) Order 1996 may make provision about the adjournment and renewal of applications (including provision requiring adjournment in specified circumstances), and
- (c) regulations under Article 11 of that Order may require a pre-hearing review to be carried out in specified circumstances.”.