

## SCHEDULE 7

### Amendments to legislation and related transitional provisions

#### Part 1

##### Primary legislation

##### **The Social Security Contributions and Benefits (Northern Ireland) Act 1992**

1.—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992(1) shall be amended in accordance with sub-paragraphs (2) to (10).

(2) In section 159(1)(2) (interpretation of Part XI and supplementary provisions)—

- (a) in the definition of “employee” omit paragraph (b) and the word “and” preceding it; and
- (b) for the definition of “employer” substitute the following definition—

““employer”, in relation to an employee and a contract of service of his, means a person who—

- (a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any earnings of the employee under the contract; or
- (b) would be liable to pay such contributions but for—
  - (i) the condition in section 6(1)(b); or
  - (ii) the employee being under the age of 16;”.

(3) In section 167(1)(3) (interpretation of Part XII etc.)—

- (a) in the definition of “employee” omit paragraph (b) and the word “and” preceding it; and
- (b) for the definition of “employer” substitute the following definition—

““employer”, in relation to a woman who is an employee, means a person who—

- (a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of her earnings; or
- (b) would be liable to pay such contributions but for—
  - (i) the condition in section 6(1)(b); or
  - (ii) the employee being under the age of 16;”.

(4) Sub-paragraph (3) applies in relation to any case where the expected week of confinement begins on or after 14th January 2007.

(5) In section 167ZJ(4) (Part XIIZA: supplementary)—

- (a) in subsection (1), for the definition of “employer” substitute the following definition—

““employer”, in relation to a person who is an employee, means a person who—

- (a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or

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(1) 1992 c. 7

(2) The definition of “employee” was amended by paragraph 202 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (C.I.). The definition of “employer” was amended by paragraph 55 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(3) The definition of “employee” was amended by paragraph 203 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (C.I.). The definition of “employer” was amended by paragraph 56 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(4) Section 167ZJ was inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

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- (b) would be liable to pay such contributions but for—
    - (i) the condition in section 6(1)(b); or
    - (ii) the employee being under the age of 16;” and
  - (b) in subsection (2) omit paragraph (b) and the word “and” preceding it.
- (6) Sub-paragraph (5) applies in relation to an entitlement to—
  - (a) statutory paternity pay (birth) in respect of children whose expected week of birth begins on or after 14th January 2007;
  - (b) statutory paternity pay (adoption) in respect of children—
    - (i) matched with a person who is notified of having been matched on or after 1st October 2006; or
    - (ii) placed for adoption on or after 1st October 2006.
- (7) In section 167ZS(5) (Part XIIIZB: supplementary)—
  - (a) in subsection (1), for the definition of “employer” substitute the following definition—
    - ““employer”, in relation to a person who is an employee, means a person who—
      - (a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or
      - (b) would be liable to pay such contributions but for—
        - (i) the condition in section 6(1)(b); or
        - (ii) the employee being under the age of 16;” and
    - (b) in subsection (2) omit paragraph (b) and the word “and” preceding it.
  - (8) Sub-paragraph (7) applies in relation to an entitlement to statutory adoption pay in respect of children—
    - (a) matched with a person who is notified of having been matched on or after 1st October 2006; or
    - (b) placed for adoption on or after 1st October 2006.
  - (9) In Schedule 11 omit paragraph 2(a)(6) (period of entitlement not to arise if at the relevant date the employee is over 65).
  - (10) Sub-paragraph (9) applies in relation to a period of incapacity for work which—
    - (a) begins on or after 1st October 2006, or
    - (b) begins before and continues on or after 1st October 2006.
  - (11) But in a case falling within sub-paragraph (10)(b), sub-paragraph (9) does not affect the application of paragraph 1 of Schedule 11 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 in relation to the part of the period of incapacity for work that falls before 1st October 2006.

### **The Statutory Sick Pay (Northern Ireland) Order 1994**

2.—(1) The Statutory Sick Pay (Northern Ireland) Order 1994(7) shall be amended in accordance with this paragraph.

(2) In Article 3(2) (restriction of employers' right of recovery) omit the words after sub-paragraph (b).

(5) Section 167ZS was inserted by Article 6 of the Employment (Northern Ireland) Order 2002 (S.I. [2002/2836 \(N.I. 2\)](#))

(6) Paragraph 2(a) was amended by Article 3(2) of the Statutory Sick Pay (Northern Ireland) Order 1994 (S.I. [1994/766 \(N.I. 5\)](#))

(7) S.I. [1994/766 \(N.I. 5\)](#)

## **The Employment Rights (Northern Ireland) Order 1996**

- 3.—(1) The 1996 Order<sup>(8)</sup> shall be amended in accordance with sub-paragraphs (2) to (15).
- (2) In Article 7 (period of continuous employment)—
- (a) in sub-paragraph (a) of paragraph (1), for “paragraphs (2) and” substitute “paragraph”; and
  - (b) omit paragraph (2).
- (3) Article 130<sup>(9)</sup> (fairness: general) shall be amended as follows—
- (a) in paragraph (2), after sub-paragraph (b) insert—  
“(ba) is retirement of the employee.”;
  - (b) after paragraph (2) insert—  
“(2A) Paragraphs (1) and (2) are subject to Articles 130ZA to 130ZF.”;
  - (c) after paragraph (3) insert—  
“(3A) In any case where the employer has fulfilled the requirements of paragraph (1) by showing that the reason (or the principal reason) for the dismissal is retirement of the employee, the question whether the dismissal is fair or unfair shall be determined in accordance with Article 130ZG.”; and
  - (d) in paragraph (4), for “Where” substitute “In any other case where”.
- (4) After Article 130 insert—

### *“Retirement*

#### **No normal retirement age: dismissal before 65**

- 130ZA.—(1) This Article applies to the dismissal of an employee if—
- (a) the employee has no normal retirement age, and
  - (b) the operative date of termination falls before the date when the employee reaches the age of 65.
- (2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

#### **No normal retirement age: dismissal at or after 65**

- 130ZB.—(1) This Article applies to the dismissal of an employee if—
- (a) the employee has no normal retirement age, and
  - (b) the operative date of termination falls on or after the date when the employee reaches the age of 65.
- (2) In a case where—
- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and
  - (b) the contract of employment terminates on the intended date of retirement,
- retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.

<sup>(8)</sup> S.I. 1996/1919 (N.I. 16)

<sup>(9)</sup> Article 130 was amended by paragraph 7 of Schedule 4 to, and Schedule 9(2) to, the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I.9)) and paragraph 2(4) of Schedule 5 to the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15))

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- (3) In a case where—
  - (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, but
  - (b) the contract of employment terminates before the intended date of retirement, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.
- (4) In a case where—
  - (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and
  - (b) there is an intended date of retirement in relation to the dismissal, but
  - (c) the contract of employment terminates before the intended date of retirement, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.
- (5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, particular regard shall be had to the matters in Article 130ZF when determining the reason (or principal reason) for dismissal.

**Normal retirement age: dismissal before retirement age**

- 130ZC.—(1) This Article applies to the dismissal of an employee if—
- (a) the employee has a normal retirement age, and
  - (b) the operative date of termination falls before the date when the employee reaches the normal retirement age.
- (2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

**Normal retirement age 65 or higher: dismissal at or after retirement age**

- 130ZD.—(1) This Article applies to the dismissal of an employee if—
- (a) the employee has a normal retirement age,
  - (b) the normal retirement age is 65 or higher, and
  - (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.
- (2) In a case where—
- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and
  - (b) the contract of employment terminates on the intended date of retirement, retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.
- (3) In a case where—
- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, but
  - (b) the contract of employment terminates before the intended date of retirement, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.
- (4) In a case where—
- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, particular regard shall be had to the matters in Article 130ZF when determining the reason (or principal reason) for dismissal.

#### **Normal retirement age below 65: dismissal at or after retirement age**

130ZE.—(1) This Article applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age,
- (b) the normal retirement age is below 65, and
- (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

(2) If it is unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(3) Paragraphs (4) to (7) apply if it is not unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age.

(4) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.

(5) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(6) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(7) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, particular regard shall be had to the matters in Article 130ZF when determining the reason (or principal reason) for dismissal.

#### **Reason for dismissal: particular matters**

130ZF.—(1) These are the matters to which particular regard is to be had in accordance with Article 130ZB(5), 130ZD(5) or 130ZE(7)—

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- (a) whether or not the employer has notified the employee in accordance with paragraph 4 of Schedule 5 to the 2006 Regulations,
- (b) if the employer has notified the employee in accordance with that paragraph, how long before the notified retirement date the notification was given,
- (c) whether or not the employer has followed, or sought to follow, the procedures in paragraph 7 of Schedule 5 to the 2006 Regulations.

(2) In paragraph (1)(b), “notified retirement date” means the date notified to the employee in accordance with paragraph 4 of Schedule 5 to the 2006 Regulations as the date on which the employer intends to retire the employee.

### **Retirement dismissals: fairness**

130ZG.—(1) This Article applies if the reason (or principal reason) for a dismissal is retirement of the employee.

(2) The employee shall be regarded as unfairly dismissed if, and only if, there has been a failure on the part of the employer to comply with an obligation imposed on him by any of the following provisions of Schedule 5 to the 2006 Regulations—

- (a) paragraph 4 (notification of retirement, if not already given under paragraph 2),
- (b) paragraphs 6 and 7 (duty to consider employee’s request not to be retired),
- (c) paragraph 8 (duty to consider appeal against decision to refuse request not to be retired).

### **Interpretation**

130ZH. In Articles 130ZA to 130ZG—

“the 2006 Regulations” means the Employment Equality (Age) Regulations (Northern Ireland) 2006;

“intended date of retirement” means the date which, by virtue of paragraph 1(2) of Schedule 5 to the 2006 Regulations, is the intended date of retirement in relation to a particular dismissal;

“normal retirement age”, in relation to an employee, means the age at which employees in the employer’s undertaking who hold, or have held, the same kind of position as the employee are normally required to retire;

“operative date of termination” means—

- (a) where the employer terminates the employee’s contract of employment by notice, the date on which the notice expires, or
- (b) where the employer terminates the contract of employment without notice, the date on which the termination takes effect.

### *Dismissals”.*

(5) In Article 140 (qualifying period of employment), in paragraph (3) (cases where no qualifying period of employment is required)—

- (a) at the end of sub-paragraph (o)(10) omit “or”; and
- (b) after sub-paragraph (p)(11) insert—

(10) Sub-paragraph (o) was inserted by regulation 31(2)(b) of [S.R. 2005 No. 47](#)

(11) Sub-paragraph (p) was inserted by paragraph 6(3)(b) of the Schedule to [S.R. 2006 No. 48](#)

“or

(q) head (a) or (b) of paragraph 13(5) of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 applies.”.

(6) Omit Article 141 (upper age limit).

(7) In Article 146(5)(a)(12) (the remedies: orders and compensation), after “Article” insert “130ZG or”.

(8) In Article 153 (basic award) omit paragraphs (4) and (5).

(9) In Article 154(1A)(a)(13) (basic award: minimum in certain cases), after “Article” insert “130ZG or”.

(10) In Article 160(1)(14) (acts which are both unfair dismissal and discrimination), for sub-paragraph (b) substitute—

“(b) any one or more of the following—

(i) the Sex Discrimination (Northern Ireland) Order 1976;

(ii) the Disability Discrimination Act 1995;

(iii) the Race Relations (Northern Ireland) Order 1997;

(iv) the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003;

(v) the Employment Equality (Age) Regulations (Northern Ireland) 2006.”.

(11) Omit Article 191 (upper age limit).

(12) Omit Article 193 (pension rights).

(13) In Article 197 (amount of a redundancy payment)—

(a) omit paragraphs (4), (5) and (8); and

(b) in paragraph (6), for “Paragraphs (1) to (5)” substitute “Paragraphs (1) to (3)”.

(14) In relation to any case where the date that is the relevant date by virtue of Article 188 of the 1996 Order falls before 1st October 2006, sub-paragraphs (11) to (13) do not apply.

(15) In Article 250(2) (powers to amend Order) omit “141(1)”.

### **The Industrial Tribunals (Northern Ireland) Order 1996**

4. Article 20(1)(a) of the Industrial Tribunals (Northern Ireland) Order 1996(15) (cases where conciliation provisions apply) shall be amended as follows—

(a) at the end of head (iv), omit “or”, and

(b) after head (v), insert—

“or

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

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(12) Paragraph (5) was inserted by Article 23(3) of the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15))

(13) Paragraph 154(1A) was inserted by Article 23(5) of the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15))

(14) Article 160(1)(b) was substituted by Article 15(3) of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)), and has been amended since, but the amendments are not relevant for the purposes of these Regulations

(15) S.I.1996/1921 (N.I. 18); Article 20(1)(a)(iv) was inserted by paragraph 10 of Schedule 2 to the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)) and Article 20(1)(a)(v) was inserted by paragraph 1 of Schedule 5 to S.R. 2003 No. 497

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## **The Fair Employment and Treatment (Northern Ireland) Order 1998**

5.—(1) The Fair Employment and Treatment (Northern Ireland) Order 1998<sup>(16)</sup> shall be amended in accordance with sub-paragraphs (2) to (4).

(2) In Article 85(1) (procedure for matters within jurisdiction of industrial tribunal)—

(a) in sub-paragraph (a), after head (v)<sup>(17)</sup> insert—

“(vi) a person has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of any provision of Part 2 or 3 of the Employment Equality (Age) Regulations (Northern Ireland) 2006; or”; and

(b) in sub-paragraph (b)<sup>(18)</sup> after “(Northern Ireland) 2003” insert “or the Employment Equality (Age) Regulations (Northern Ireland) 2006”.

(3) In Article 85(3)(b), after head (iv)<sup>(19)</sup>, insert—

“(v) regulation 41(4) of the Employment Equality (Age) Regulations (Northern Ireland) 2006,”.

(4) In Schedule 2A<sup>(20)</sup>—

(a) in paragraph 1(1)—

(i) in the definition of “active member”, “deferred member”, “managers”, “pensioner member” and “trustees or managers”, omit the words “as at 10th December 2003”; and

(ii) in the definition of “occupational pension scheme”, omit the words “as at 10th December 2003”; and

(b) in paragraph 1(2), omit the words “as at 10th December 2003”.

## **The Employment (Northern Ireland) Order 2003**

6. In the Employment (Northern Ireland) Order 2003<sup>(21)</sup> at the end of each of the following Schedules—

(a) Schedule 2 (tribunal jurisdictions to which Article 17 applies);

(b) Schedule 3 (tribunal jurisdictions to which Article 19 applies); and

(c) Schedule 4 (tribunal jurisdictions to which Article 27 applies),

insert—

“Regulation 41 of the Employment Equality (Age) Regulations (Northern Ireland) 2006 (discrimination in the employment field)”.

<sup>(16)</sup> S.I.1998/3162 (N.I. 21)

<sup>(17)</sup> Head (v) was inserted by paragraph 3 of Schedule 5 to S.R. 2003 No. 497

<sup>(18)</sup> Sub-paragraph (b) was amended by paragraph 3 of Schedule 5 to S.R. 2003 No. 497

<sup>(19)</sup> Head (iv) was inserted by paragraph 3 of Schedule 5 to S.R. 2003 No. 497

<sup>(20)</sup> Schedule 2A was inserted by regulation 18(4) of S.R. 2003 No. 520

<sup>(21)</sup> S.I. 2003/2902 (N.I. 15)