STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART I

INTRODUCTORY AND INTERPRETATION

CHAPTER I

CITATION AND COMMENCEMENT

Citation and commencement

1.—(1) This Order may be cited as the Employment Rights (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.

CHAPTER II

INTERPRETATION – GENERAL

Interpretation – general

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—

"act" and "action" each includes omission and references to doing an act or taking action shall be construed accordingly,

"the Agency" means the Labour Relations Agency,

"basic award of compensation for unfair dismissal" shall be construed in accordance with Article 152,

"business" includes a trade or profession and includes any activity carried on by a body of persons (whether corporate or unincorporated),

"childbirth" means the birth of a living child or the birth of a child whether living or dead after twenty-four weeks of pregnancy,

"collective agreement" has the meaning given by Article 2(2) of the 1992 Order,

"the Department" means the Department of Economic Development,

"dismissal procedures agreement" means an agreement in writing with respect to procedures relating to dismissal made by or on behalf of one or more independent trade unions and one or more employers or employers' associations,

"employers' association" has the meaning given by Article 4(1) and (2) of the 1992 Order,

"expected week of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur,

"guarantee payment" has the meaning given by Article 60,

"independent trade union" means a trade union which—

(a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations, and

(b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatever) tending towards such control,

"job", in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed,

"maternity leave period" shall be construed in accordance with Articles 104 and 105,

"notified day of return" shall be construed in accordance with Article 115,

"officer" and "official", in relation to a trade union, have the same meaning as in the Trade Union and Labour Relations Order,

"position", in relation to an employee, means the following matters taken as a whole—

(a) his status as an employee,

(b) the nature of his work, and

(c) his terms and conditions of employment,

"recognised", in relation to a trade union, has the same meaning as in Part V of the 1992 Order,

"redundancy payment" has the meaning given by Part XII,

"relevant date" has the meaning given by Articles 180 and 188,

"renewal" includes extension, and any reference to renewing a contract or a fixed term shall be construed accordingly,

"statutory provision" has the meaning given 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 meaning given by Article 3(1) of the 1992 Order,

"the Trade Union and Labour Relations Order" means the Trade Union and Labour Relations (Northern Ireland) Order 1995,

"the 1992 Order" means the Industrial Relations (Northern Ireland) Order 1992,

"week"—

(a) in Chapter III of this Part means a week ending with Saturday, and

(b) otherwise, except in Article 118, means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day and, in relation to any other employee, a week ending with Saturday.

(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) References in this Order (except Part XIII) to redundancy, dismissal by reason of redundancy and similar expressions shall be construed in accordance with Article 174.

(6) In Articles 12(3), 171(2) and 189 "lock-out" means—

(a) the closing of a place of employment,

(b) the suspension of work, or

(c) the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute,

done with a view to compelling persons employed by the employer, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment. n

(7) In Articles 12(1) and (2), 123(2), 175(2) and (3), 178(1), 179(2) and (3) and 189 "strike" means—

(a) the cessation of work by a body of employed persons acting in combination, or

(b) a concerted refusal, or a refusal under a common understanding, of any number of employed persons to continue to work for an employer in consequence of a dispute,

done as a means of compelling their employer or any employed person or body of employed persons, or to aid other employees in compelling their employer or any employed person or body of employed persons, to accept or not to accept terms or conditions of or affecting employment.

Employees, workers

3.—(1) In this Order "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Order "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Order "worker" means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Order "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Order "employment"—

(a) in relation to an employee, means (except for the purposes of Article 206) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and "employed" shall be construed accordingly.

Associated employers

4. 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.

Normal working hours

5.—(1) Where an employee is entitled to overtime pay when employed for more than a fixed number of hours in a week or other period, there are for the purposes of this Order normal working hours in his case.

(2) Subject to paragraph (3), the normal working hours in such a case are the fixed number of hours.

(3) Where in such a case—

(a) the contract of employment fixes the number, or minimum number, of hours of employment in a week or other period (whether or not it also provides for the reduction of that number or minimum in certain circumstances), and

(b) that number or minimum number of hours exceeds the number of hours without overtime,

the normal working hours are that number or minimum number of hours (and not the number of hours without overtime).

CHAPTER III

CONTINUOUS EMPLOYMENT

Introductory

6.—(1) References in any provision of this Order to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.

(2) In computing an employee's period of continuous employment for the purposes of any provision of this Order, any question—

(a) whether the employee's employment is of a kind counting towards a period of continuous employment, or

(b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,

shall be determined week by week; but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of twelve months in accordance with Article 7.

(3) Subject to Articles 11 to 13, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.

(4) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

Period of continuous employment

7.—(1) An employee's period of continuous employment for the purposes of any provision of this Order—

(a) (subject to paragraphs (2) and (3)) begins with the day on which the employee starts work, and

(b) ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision.

(2) For the purposes of Articles 190 and 197(1), an employee's period of continuous employment shall be treated as beginning on the employee's eighteenth birthday if that is later than the day on which the employee starts work.

(3) If an employee's period of continuous employment includes one or more periods which (by virtue of Article 11, 12 or 13) while not counting in computing the length of the period do not break continuity of employment, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period, or the aggregate number of days falling within those periods, calculated in accordance with the Article in question.

Weeks counting in computing period

8.—(1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.

(2) Any week (not within paragraph (1)) during an employee's period of absence from work occasioned wholly or partly by pregnancy or childbirth after which the employee returns to work in accordance with Article 111, or in pursuance of an offer described in Article 128(3), counts in computing the employee's period of employment.

(3) Subject to paragraph (4), any week (not within paragraph (1)) during the whole or part of which an employee is—

(a) incapable of work in consequence of sickness or injury,

(b) absent from work on account of a temporary cessation of work,

(c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose, or

(d) absent from work wholly or partly because of pregnancy or childbirth,

counts in computing the employee's period of employment.

(4) Not more than twenty-six weeks count under paragraph (3)(a) or (subject to paragraph (2)) paragraph (3)(d) between any periods falling under paragraph (1).

Intervals in employment

9.—(1) Where in the case of an employee a date later than the date which would be the effective date of termination by virtue of paragraph (1) of Article 129 is treated for certain purposes as the effective date of termination by virtue of paragraph (2) or (4) of that Article the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of Article 140(1) or 153(1) the period for which the employee has been continuously employed.

(2) Where an employee is by virtue of Article 173(1) regarded for the purposes of Part XII as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, the period of the interval counts as a period of employment in ascertaining for the purposes of Article 190 or 197(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under Article 10 or 11).

(3) Where in the case of an employee a date later than the date which would be the relevant date by virtue of paragraphs (2) to (4) of Article 180 is treated for certain purposes as the relevant date by virtue of paragraph (5) of that Article, the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of Article 190 or 197(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under Article 10 or 11).

Special provisions for redundancy payments

10.—(1) This Article applies where a period of continuous employment has to be determined in relation to an employee for the purposes of the application of Article 190 or 197(1).

(2) The continuity of a period of employment is broken where—

(a) a redundancy payment has previously been paid to the employee (whether in respect of dismissal or in respect of lay-off or short-time), and

(b) the contract of employment under which the employee was employed was renewed (whether by the same or another employer) or the employee was re-engaged under a new contract of employment (whether by the same or another employer).

(3) The continuity of a period of employment is also broken where—

(a) a payment has been made to the employee (whether in respect of the termination of his employment or lay-off or short-time) in accordance with a scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 or arrangements falling within Article 212(3) or (4), and

(b) he commenced new, or renewed, employment.

(4) The date on which the person's continuity of employment is broken by virtue of this Article—

(a) if the employment was under a contract of employment, is the date which was the relevant date in relation to the payment mentioned in paragraph (2)(a) or (3)(a), and

(b) if the employment was otherwise than under a contract of employment, is the date which would have been the relevant date in relation to the payment mentioned in paragraph (2)(a) or (3)(a) had the employment been under a contract of employment.

(5) For the purposes of this Article a redundancy payment shall be treated as having been paid if—

(a) the whole of the payment has been paid to the employee by the employer,

(b) a tribunal has determined liability and found that the employer must pay part (but not all) of the redundancy payment and the employer has paid that part, or

(c) the Department has paid a sum to the employee in respect of the redundancy payment under Article 202.

Employment abroad etc.

11.—(1) This Chapter applies to a period of employment—

(a) (subject to the following provisions of this Article) even where during the period the employee was engaged in work wholly or mainly outside Northern Ireland, and

(b) even where the employee was excluded by or under this Order from any right conferred by this Order.

(2) For the purposes of Articles 190 and 197(1) a week of employment does not count in computing a period of employment if the employee—

(a) was employed outside Northern Ireland during the whole or part of the week, and

(b) was not during that week an employed earner for the purposes of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 in respect of whom a secondary Class 1 contribution was payable under that Act (whether or not the contribution was in fact paid).

(3) Where by virtue of paragraph (2) a week of employment does not count in computing a period of employment, the continuity of the period is not broken by reason only that the week does not count in computing the period; and the number of days which, for the purposes of Article 7(3), fall within the intervening period is seven for each week within this paragraph.

(4) Any question arising under paragraph (2) whether—

(a) a person was an employed earner for the purposes of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, or

(b) if so, whether a secondary Class 1 contribution was payable in respect of him under that Act,

shall be determined by the Department of Health and Social Services.

(5) Any legislation (including regulations) as to the determination of questions which under the Social Security Administration (Northern Ireland) Act 1992 that Department is empowered to determine (including provisions as to the reference of questions for decision, or as to appeals, to the Court of Appeal) apply to the determination of any question by that Department under paragraph (4).

(6) Paragraph (2) does not apply in relation to a person who is—

(a) employed as a master or seaman in a British ship, and

(b) ordinarily resident in Northern Ireland.

Industrial disputes

12.—(1) A week does not count under Article 8 if during the week, or any part of the week, the employee takes part in a strike.

(2) The continuity of an employee's period of employment is not broken by a week which does not count under this Chapter (whether or not by virtue only of paragraph (1)) if during the week, or any part of the week, the employee takes part in a strike; and the number of days which, for the purposes of Article 7(3), fall within the intervening period is the number of days between the last working day before the strike and the day on which work was resumed.

(3) The continuity of an employee's period of employment is not broken by a week if during the week, or any part of the week, the employee is absent from work because of a lock-out by the employer; and the number of days which, for the purposes of Article 7(3), fall within the intervening period is the number of days between the last working day before the lock-out and the day on which work was resumed.

Reinstatement after military service

13.—(1) If a person who is entitled to apply to his former employer under the Reserve Forces (Safeguard of Employment) Act 1985 enters the employment of the employer not later than the end of the six month period mentioned in section 1(4)(b) of that Act, his period of service in the armed forces of the Crown in the circumstances specified in section 1(1) of that Act does not break his continuity of employment,

(2) In the case of such a person the number of days which, for the purposes of Article 7(3), fall within the intervening period is the number of days between the last day of his previous period of employment with the employer (or, if there was more than one such period, the last of them) and the first day of the period of employment beginning in the six month period.

Change of employer

14.—(1) Subject to the provisions of this Article, this Chapter relates only to employment by the one employer.

(2) If a trade or business, or an undertaking (whether or not established by or under a statutory provision), is transferred from one person to another—

(a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee, and

(b) the transfer does not break the continuity of the period of employment.

(3) If by or under any statutory provision a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer—

(a) the employee's period of employment at the time when the modification takes effect counts as a period of employment with the second body corporate, and

(b) the change of employer does not break the continuity of the period of employment.

(4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased—

(a) the employee's period of employment at the time of the death counts as a period of employment with the employer's personal representatives or trustees, and

(b) the death does not break the continuity of the period of employment.

(5) If there is a change in the partners, personal representatives or trustees who employ any person—

(a) the employee's period of employment at the time of the change counts as a period of employment with the partners, personal representatives or trustees after the change, and

(b) the change does not break the continuity of the period of employment.

(6) If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters the second employer's employment, is an associated employer of the first employer—

(a) the employee's period of employment at that time counts as a period of employment with the second employer, and

(b) the change of employer does not break the continuity of the period of employment.

(7) If a person employed in relevant employment by a health service employer is taken into relevant employment by another such employer, his period of employment at the time of the change of employer counts as a period of employment with the second employer and the change does not break the continuity of the period of employment.

(8) For the purposes of paragraph (7) employment is relevant employment if it is employment of a description—

(a) in which persons are engaged while undergoing professional training which involves their being employed successively by a number of different health service employers, and

(b) which is specified in an order made by the Department.

(9) The following are health service employers for the purposes of paragraphs (7) and (8)—

(a) Health and Social Services Boards;

(b) Special Health and Social Services Agencies;

(c) Health and Social Services Trusts.

Reinstatement or re-engagement of dismissed employee

15.—(1) Regulations made by the Department may make provision—

(a) for preserving the continuity of a person's period of employment for the purposes of this Chapter or for the purposes of this Chapter as applied by or under any other statutory provision specified in the regulations, or

(b) for modifying or excluding the operation of Article 10 subject to the recovery of any such payment as is mentioned in that Article,

in cases where, in consequence of action to which paragraph (2) applies, a dismissed employee is reinstated or re-engaged by his employer or by a successor or associated employer of that employer.

(2) This paragraph applies to any action taken in relation to the dismissal of an employee which consists of—

(a) his making a claim in accordance with a dismissal procedures agreement designated by an order under Article 142,

(b) the presentation by him of a relevant complaint of dismissal,

(c) any action taken by the Agency under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996, or

(d) the making of a relevant compromise contract.

(3) In paragraph (2)(b) "relevant complaint of dismissal" means—

(a) a complaint under Article 145 of this Order,

(b) a complaint under Article 63 of the Sex Discrimination (Northern Ireland) Order 1976 arising out of a dismissal, or

(c) a complaint under section 8 of the Disability Discrimination Act 1995 arising out of a dismissal.

(4) In paragraph (2)(d) "relevant compromise contract" means—

(a) an agreement or contract authorised by—

(i) Article 245(2)(f) of this Order,

(ii) Article 77(4)(aa) of the Sex Discrimination (Northern Ireland) Order 1976, or

(iii) section 9(2)(b) of the Disability Discrimination Act 1995, or

(b) an agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where the tribunal has jurisdiction in respect of the proceedings by virtue of an order under Article 5 of the Industrial Tribunals (Northern Ireland) Order 1996.

CHAPTER IV

A WEEK'S PAY

Introductory

Introductory

16. The amount of a week's pay of an employee shall be calculated for the purposes of this Order in accordance with this Chapter.

Employments with normal working hours

General

17.—(1) This Article and Articles 18 and 19 apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) Subject to Article 18, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.

(3) Subject to Article 18, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does vary with the amount of work done in the I period, the amount of a week's pay is the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks ending—

(a) where the calculation date is the last day of a week, with that week, and

(b) otherwise, with the last complete week before the calculation date.

(4) In this Article references to remuneration varying with the amount of work done includes remuneration which may include any commission or similar payment which varies in amount.

(5) This Article is subject to Articles 23 and 24.

Remuneration varying according to time of work

18.—(1) This Article applies if the employee is required under the contract of employment in force on the calculation date to work during normal working hours on days of the week, or at times of the day, which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of those days or times.

(2) The amount of a week's pay is the amount of remuneration for the average number of weekly normal working hours at the average hourly rate of remuneration.

(3) For the purposes of paragraph (2)—

(a) the average number of weekly hours is calculated by dividing by twelve the total number of the employee's normal working hours during the relevant period of twelve weeks, and

(b) the average hourly rate of remuneration is the average hourly rate of remuneration payable by the employer to the employee in respect of the relevant period of twelve weeks.

(4) In paragraph (3) "the relevant period of twelve weeks" means the period of twelve weeks ending—

(a) where the calculation date is the last day of a week, with that week, and

(b) otherwise, with the last complete week before the calculation date.

(5) This Article is subject to Articles 23 and 24.

Supplementary

19.—(1) For the purposes of Articles 17 and 18, in arriving at the average hourly rate of remuneration, only—

(a) the hours when the employee was working, and

(b) the remuneration payable for, or apportionable to, those hours,

shall be brought in.

(2) If for any of the twelve weeks mentioned in Articles 17 and 18 no remuneration within paragraph (1)(b) was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring up to twelve the number of weeks of which account is taken.

(3) Where—

(a) in arriving at the average hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and

(b) the amount of that remuneration was greater than it would have been if the work had been done in normal working hours (or, in a case within Article 1(3), in normal working hours falling within the number of hours without overtime),

account shall be taken of that remuneration as if the work had been done in such hours and the amount of that remuneration had been reduced accordingly.

Employments with no normal working hours

Employments with no normal working hours

20.—(1) This Article applies where there are no normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) The amount of a week's pay is the amount of the employee's average weekly remuneration in the period of twelve weeks ending—

(a) where the calculation date is the last day of a week, with that week, and

(b) otherwise, with the last complete week before the calculation date.

(3) In arriving at the average weekly remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring up to twelve the number of weeks of which account is taken.

(4) This Article is subject to Articles 23 and 24.

The calculation date

Rights during employment

21.—(1) Where the calculation is for the purposes of Article 62, the calculation date is—

(a) where the employee's contract has been varied, or a new contract entered into, in connection with a period of short-time working, the last day on which the original contract was in force, and

(b) otherwise, the day in respect of which the guarantee payment is payable.

(2) Where the calculation is for the purposes of Article 81 or 82, the calculation date is the day on which the employer's notice was given.

(3) Where the calculation is for the purposes of Article 84, the calculation date is the day of the appointment.

(4) Where the calculation is for the purposes of Article 90, the calculation date is the day on which the time off was taken or on which it is alleged the time off should have been permitted.

(5) Where the calculation is for the purposes of Article 101—

(a) in the case of an employee suspended on medical grounds, the calculation date is the day before that on which the suspension begins, and

(b) in the case of an employee suspended on maternity grounds, the calculation date is—

(i) where the day before that on which the suspension begins falls within either the employee's maternity leave period or the further period up to the day on which the employee exercises the right conferred on her by Article 111, the day before the beginning of the maternity leave period, and

(ii) otherwise, the day before that on which the suspension begins.

Rights on termination

22.—(1) Where the calculation is for the purposes of Article 120 or 121, the calculation date is the day immediately preceding the first day of the period of notice required by Article 118(1) or (2).

(2) Where the calculation is for the purposes of Article 125, 151 or 159, the calculation date is—

(a) if the dismissal was with notice, the date on which the employer's notice was given, and

(b) otherwise, the effective date of termination.

(3) Where the calculation is for the purposes of Article 153 or 155, the calculation date is—

(a) if the employee is taken to be dismissed by virtue of Article 128(1), the last day on which the employee worked under her contract of employment immediately before the beginning of her maternity leave period,

(b) if by virtue of paragraph (2) or (4) of Article 129 a date later than the effective date of termination as defined in paragraph (1) of that Article is to be treated for certain purposes as the effective date of termination, the effective date of termination as so defined, and

(c) otherwise, the date specified in paragraph (6).

(4) Where the calculation is for the purposes of Article 182(2), the calculation date is the day immediately preceding the first of the four, or six, weeks referred to in Article 183(2).

(5) Where the calculation is for the purposes of Article 197, the calculation date is—

(a) if the employee is taken to be dismissed by virtue of Article 172(1), the last day on which the employee worked under her contract of employment immediately before the beginning of her maternity leave period,

(b) if by virtue of paragraph (5) of Article 180 a date is to be treated for certain purposes as the relevant date which is later than the relevant date as defined by the previous provisions of that Article, the relevant date as so defined, and

(c) otherwise, the date specified in paragraph (6).

(6) The date referred to in paragraphs (3)(c) and (5)(c) is the date on which notice would have been given had—

(a) the contract been terminable by notice and been terminated by the employer giving such notice as is required by Article 118 to terminate the contract, and

(b) the notice expired on the effective date of termination, or the relevant date,

(whether or not those conditions were in fact fulfilled).

(7) Where the calculation is for the purposes of Article 218, the calculation date is the date on which the protective award was made or, in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of paragraph (5) is the calculation date for the purpose of computing the amount of a redundancy payment in relation to that dismissal (whether or not the employee concerned is entitled to any such payment).

Maximum amount of week's pay

Maximum amount

23.—(1) For the purpose of calculating—

(a) a basic award of compensation for unfair dismissal,

(b) an additional award of compensation for unfair dismissal, or

(c) a redundancy payment,

the amount of a week's pay shall not exceed £210.

(2) The Department may by order vary the limits imposed by paragraph (1).

(3) Such an order may provide that it applies in the case of a dismissal—

(a) in relation to which the date which is the effective date of termination for the purposes of this paragraph by virtue of Article 129(2) or (4) falls after the order comes into operation, or

(b) in relation to which the date which is the relevant date for the purposes of this paragraph by virtue of Article 180(5) falls after the order comes into operation,

even if the date which is the effective date of termination, or the relevant date, for other purposes of this Order falls before the order comes into operation.

(4) Paragraph (3)—

(a) does not apply to a case within Article 128(1) or 172(1), but

(b) is without prejudice to Article 251(6).

Miscellaneous

New employments and other special cases

24.—(1) In any case in which the employee has not been employed for a sufficient period to enable a calculation to be made under the preceding provisions of this Chapter, the amount of a week's pay is the amount which fairly represents a week's pay.

(2) In determining that amount the industrial tribunal—

(a) shall apply as nearly as may be such of the preceding provisions of this Chapter as it considers appropriate, and

(b) may have regard to such of the considerations specified in paragraph (3) as it thinks fit.

(3) The considerations referred to in paragraph (2)(b) are—

(a) any remuneration received by the employee in respect of the employment in question,

(b) the amount offered to the employee as remuneration in respect of the employment in question,

(c) the remuneration received by other persons engaged in relevant comparable employment with the same employer, and

(d) the remuneration received by other persons engaged in relevant comparable employment with other employers.

(4) The Department may by regulations provide that in cases prescribed by the regulations the amount of a week's pay shall be calculated in such manner as may be so prescribed.

Supplementary

25.—(1) In arriving at—

(a) an average hourly rate of remuneration, or

(b) average weekly remuneration,

under this Chapter, account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of Chapter III of this Part, a period of employment with the former employer counts as part of the employee's continuous period of employment.

(2) Where under this Chapter account is to be taken of remuneration or other payments for a period which does not coincide with the periods for which the remuneration or other payments are calculated, the remuneration or other payments shall be apportioned in such manner as may be just.

PART II

ACCESS TO EMPLOYMENT

Refusal of employment on grounds related to union membership

26.—(1) It is unlawful to refuse a person employment—

(a) because he is, or is not, a member of a trade union, or

(b) because he is unwilling to accept a requirement—

(i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or

(ii) to make payments or suffer deductions in the event of his not being a member of a trade union.

(2) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

(a) that employment to which the advertisement relates is open only to a person who is, or is not, a member of a trade union, or

(b) that any such requirement as is mentioned in paragraph (1)(b) will be imposed in relation to employment to which the advertisement relates,

a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks and is refused employment to which the advertisement relates, shall be conclusively presumed to have been refused employment for that reason.

(3) Where there is an arrangement or practice under which employment is offered only to persons put forward or approved by a trade union, and the trade union puts forward or approves only persons who are members of the union, a person who is not a member of the union and who is refused employment in pursuance of the arrangement or practice shall be taken to have been refused employment because he is not a member of the trade union.

(4) A person shall be taken to be refused employment if he seeks employment of any description with a person and that person—

(a) refuses or deliberately omits to entertain and process his application or enquiry, or

(b) causes him to withdraw or cease to pursue his application or enquiry, or

(c) refuses or deliberately omits to offer him employment of that description, or

(d) makes him an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted, or

(e) makes him an offer of such employment but withdraws it or causes him not to accept it.

(5) Where a person is offered employment on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in paragraph (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused employment for that reason.

(6) Where a person may not be considered for appointment or election to an office in a trade union unless he is a member of the union, or of a particular branch or section of the union or of one of a number of particular branches or sections of the union, nothing in this Article applies to anything done for the purpose of securing compliance with that condition although as holder of the office he would be employed by the union.

For this purpose an "office" means any position—

(a) by virtue of which the holder is an official of the union, or

(b) to which Part III of the Trade Union and Labour Relations Order applies (duty to hold elections).

(7) The provisions of this Article apply in relation to an employment agency acting, or purporting to act, on behalf of an employer as in relation to an employer.

Refusal of service of employment agency on grounds related to union membership

27.—(1) It is unlawful for an employment agency to refuse a person any of its services—

(a) because he is, or is not, a member of a trade union, or

(b) because he is unwilling to accept a requirement to take steps to become or cease to be, or to remain or not to become, a member of a trade union.

(2) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

(a) that any service of an employment agency is available only to a person who is, or is not, a member of a trade union, or

(b) that any such requirement as is mentioned in paragraph (1)(b) will be imposed in relation to a service to which the advertisement relates,

a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks to avail himself of and is refused that service, shall be conclusively presumed to have been refused it for that reason.

(3) A person shall be taken to be refused a service if he seeks to avail himself of it and the agency—

(a) refuses or deliberately omits to make the service available to him, or

(b) causes him not to avail himself of the service or to cease to avail himself of it, or

(c) does not provide the same service, on the same terms, as is provided to others.

(4) Where a person is offered a service on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in paragraph (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused the service for that reason.

Complaints to industrial tribunal

28.—(1) A person may present a complaint to an industrial tribunal—

(a) that he has been unlawfully refused employment in contravention of Article 26(1); or

(b) that he has been unlawfully refused any service of an employment agency in contravention of Article 27(1).

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the date of the conduct to which the complaint relates, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) The date of the conduct to which a complaint under paragraph (1)(a) relates shall be taken to be—

(a) in the case of an actual refusal, the date of the refusal;

(b) in the case of a deliberate omission—

(i) to entertain and process the complainant's application or enquiry, or

(ii) to offer employment, the end of the period within which it was reasonable to expect the employer to act;

(c) in the case of conduct causing the complainant to withdraw or cease to pursue his application or enquiry, the date of that conduct;

(d) in a case where an offer was made but withdrawn, the date when it was withdrawn;

(e) in any other case where an offer was made but not accepted, the date on which it was made.

(4) The date of the conduct to which a complaint under paragraph (1)(b) relates shall be taken to be—

(a) in the case of an actual refusal, the date of the refusal;

(b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act;

(c) in the case of conduct causing the complainant not to avail himself of a service or to cease to avail himself of it, the date of that conduct;

(d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact provided was provided.

Determination of complaints

29.—(1) Where the industrial tribunal finds that a complaint under Article 28 is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—

(a) an order requiring the respondent to pay compensation to the complainant of such amount as the tribunal may determine;

(b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.

(2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.

(3) If the respondent fails without reasonable justification to comply with a recommendation to take action, the tribunal may increase its award of compensation or, if it has not made such an award, make one.

(4) The total amount of compensation shall not exceed the limit for the time being imposed by Article 158(1).

Complaint against employer and employment agency

30.—(1) Where a person has a right of complaint against a prospective employer and against an employment agency arising out of the same facts, he may present a complaint against either of them or against them jointly.

(2) If a complaint is brought against one only, he or the complainant may request the tribunal to join the other as a party to the proceedings.

(3) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(4) Where a complaint is brought against an employer and an employment agency jointly, or where it is brought against one and the other is joined as a party to the proceedings, and the tribunal—

(a) finds that the complaint is well-founded as against the employer and the agency, and

(b) makes an award of compensation,

it may order that the compensation shall be paid by the one or the other, or partly by one and partly by the other, as the tribunal may consider just and equitable in the circumstances.

Awards against third parties

31.—(1) If in proceedings on a complaint under Article 28 either the complainant or the respondent claims that the respondent was induced to act in the manner complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the complainant or the respondent may request the industrial tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(3) Where a person has been so joined as a party to the proceedings and the tribunal—

(a) finds that the complaint is well-founded,

(b) makes an award of compensation, and

(c) also finds that the claim in paragraph (1) is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the respondent, or partly by that person and partly by the respondent, as the tribunal may consider just and equitable in the circumstances.

(4) Where by virtue of Article 30 there is more than one respondent, the above provisions apply to either or both of them.

Interpretation and other supplementary provisions

32.—(1) In this Part—

"advertisement" includes every form of advertisement or notice, whether to the public or not, and references to publishing an advertisement shall be construed accordingly:

"employment agency" means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but subject to paragraph (2).

(2) For the purposes of this Part as it applies to employment agencies—

(a) services other than those mentioned in the definition of "employment agency" above shall be disregarded, and

(b) a trade union shall not be regarded as an employment agency by reason of services provided by it only for, or in relation to, its members.

(3) References in this Part to being or not being a member of a trade union are to being or not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions.

Any such reference includes a reference to being or not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

PART III

EMPLOYMENT PARTICULARS

Right to statements of employment particulars

Statement of initial employment particulars

33.—(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

(2) The statement may (subject to Article 34(4)) be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment.

(3) The statement shall contain particulars of—

(a) the names of the employer and employee,

(b) the date when the employment began, and

(c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment containing them) is given, of—

(a) the scale or rate of remuneration or the method of calculating remuneration,

(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),

(c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),

(d) any terms and conditions relating to any of the following—

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

(ii) incapacity for work due to sickness or injury, including any provision for sick pay, and

(iii) pensions and pension schemes,

(e) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,

(f) the title of the job which the employee is employed to do or a brief description of the work for which he is employed,

(g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,

(h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer,

(j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, and

(k) where the employee is required to work outside the United Kingdom for a period of more than one month—

(i) the period for which he is to work outside the United Kingdom,

(ii) the currency in which remuneration is to be paid while he is working outside the United Kingdom,

(iii) any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom, and

(iv) any terms and conditions relating to his return to the United Kingdom.

(5) Paragraph (4)(d)(iii) does not apply to an employee of a body or authority if—

(a) the employee's pension rights depend on the terms of a pension scheme established under any statutory provision, and

(b) any such provision requires the body or authority to give to a new employee information concerning the employee's pension rights or the determination of questions affecting those rights.

Statement of initial particulars: supplementary

34.—(1) If, in the case of a statement under Article 33, there are no particulars to be entered under any of the heads of sub-paragraph (d) or (k) of paragraph (4) of that Article, or under any of the other sub-paragraphs of paragraph (3) or (4) of that Article, that fact shall be stated.

(2) A statement under Article 33 may refer the employee for particulars of any of the matters specified in paragraph (4)(d)(ii) and (iii) of that Article to the provisions of some other document which is reasonably accessible to the employee.

(3) A statement under Article 33 may refer the employee for particulars of either of the matters specified in paragraph (4)(e) of that Article to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which is reasonably accessible to the employee.

(4) The particulars required by Article 33(3) and (4)(a) to (c), (d)(i), (f) and (h) shall be included in a single document.

(5) Where before the end of the period of two months after the beginning of an employee's employment the employee is to begin to work outside the United Kingdom for a period of more than one month, the statement under Article 33 shall be given to him not later than the time when he leaves the United Kingdom in order to begin so to work.

(6) A statement shall be given to a person under Article 33 even if his employment ends before the end of the period within which the statement is required to be given.

Note about disciplinary procedures and pensions

35.—(1) A statement under Article 33 shall include a note—

(a) specifying any disciplinary rules applicable to the employee or referring the employee to the provisions of a document specifying such rules which is reasonably accessible to the employee,

(b) specifying (by description or otherwise)—

(i) a person to whom the employee can apply if dissatisfied with any disciplinary decision relating to him, and

(ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment,

and the manner in which any such application should be made, and

(c) where there are further steps consequent on any such application, explaining those steps or referring to the provisions of a document explaining them which is reasonably accessible to the employee.

(2) Paragraph (1) does not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.

(3) The note need not comply with the following provisions of paragraph (1)—

(a) sub-paragraph (a),

(b) in sub-paragraph (b), head (i) and the words following head (ii) so far as relating to head (i), and

(c) sub-paragraph (c),

if on the date when the employee's employment began the relevant number of employees was less than twenty.

(4) In paragraph (3) "the relevant number of employees", in relation to an employee, means the number of employees employed by his employer added to the number of employees employed by any associated employer.

(5) The note shall also state whether there is in force a contracting-out certificate (issued in accordance with Chapter I of Part III of the Pension Schemes (Northern Ireland) Act 1993) stating that the employment is contracted-out employment (for the purposes of that Part of that Act).

Statement of changes

36.—(1) If, after the material date, there is a change in any of the matters particulars of which are required by Articles 33 to 35 to be included or referred to in a statement under Article 33, the employer shall give to the employee a written statement containing particulars of the change.

(2) For the purposes of paragraph (1)—

(a) in relation to a matter particulars of which are included or referred to in a statement given under Article 33 otherwise than in instalments, the material date is the date to which the statement relates,

(b) in relation to a matter particulars of which—

(i) are included or referred to in an instalment of a statement given under Article 33, or

(ii) are required by Article 34(4) to be included in a single document but are not included in an instalment of a statement given under Article 33 which does include other particulars to which that provision applies,

the material date is the date to which the instalment relates, and

(c) in relation to any other matter, the material date is the date by which a statement under Article 33 is required to be given.

(3) A statement under paragraph (1) shall be given at the earliest opportunity and, in any event, not later than—

(a) one month after the change in question, or

(b) where that change results from the employee being required to work outside the United Kingdom for a period of more than one month, the time when he leaves the United Kingdom in order to begin so to work, if that is earlier.

(4) A statement under paragraph (1) may refer the employee to the provisions of some other document which is reasonably accessible to the employee for a change in any of the matters specified in Articles 33(4)(d)(ii) and (iii) and 35(1)(a) and (c).

(5) A statement under paragraph (1) may refer the employee for a change in either of the matters specified in Article 33(4)(e) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which is reasonably accessible to the employee.

(6) Where, after an employer has given to an employee a statement under Article 33, either—

(a) the name of the employer (whether an individual or a body corporate or partnership) is changed without any change in the identity of the employer, or

(b) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken,

and paragraph (7) applies in relation to the change, the person who is the employer immediately after the change is not required to give to the employee a statement under Article 33; but the change shall be treated as a change falling within paragraph (1) of this Article.

(7) This paragraph applies in relation to a change if it does not involve any change in any of the matters (other than the names of the parties) particulars of which are required by Articles 33 to 35 to be included or referred to in the statement under Article 33.

(8) A statement under paragraph (1) which informs an employee of a change such as is referred to in paragraph (6)(b) shall specify the date on which the employee's period of continuous employment began.

Exclusion from rights to statements

37.—(1) Articles 33 to 36 apply to an employee who at any time comes or ceases to come within the exceptions from those Articles provided by Articles 239 and 242, and under Article 250, as if his employment with his employer terminated or began at that time.

(2) The fact that Article 33 is directed by paragraph (1) to apply to an employee as if his employment began on his ceasing to come within the exceptions referred to in that paragraph does not affect the obligation under Article 33(3)(b) to specify the date on which his employment actually began.

Reasonably accessible document or collective agreement

38. In Articles 34 to 36 references to a document or collective agreement which is reasonably accessible to an employee are references to a document or collective agreement which—

(a) the employee has reasonable opportunities of reading in the course of his employment, or

(b) is made reasonably accessible to the employee in some other way.

Power of Department to require particulars of further matters

39. The Department may by order provide that Article 33 shall have effect as if particulars of such further matters as may be specified in the order were included in the particulars required by that Article; and, for that purpose, the order may include such provisions amending that Article as appear to the Department to be expedient.

Right to itemised pay statement

Itemised pay statement

40.—(1) An employee has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.

(2) The statement shall contain particulars of—

(a) the gross amount of the wages or salary,

(b) the amounts of any variable, and (subject to Article (1) any fixed, deductions from that gross amount and the purposes for which they are made,

(c) the net amount of wages or salary payable, and

(d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

Standing statement of fixed deductions

41.—(1) A pay statement given in accordance with Article 40 need not contain separate particulars of a fixed deduction if—

(a) it contains instead an aggregate amount of fixed deductions, including that deduction, and

(b) the employer has given to the employee, at or before the time at which the pay statement is given, a standing statement of fixed deductions which satisfies paragraph (2).

(2) A standing statement of fixed deductions satisfies this paragraph if—

(a) it is in writing,

(b) it contains, in relation to each deduction comprised in the aggregate amount of deductions, particulars of—

(i) the amount of the deduction,

(ii) the intervals at which the deduction is to be made, and

(iii) the purpose for which it is made, and

(c) it is (in accordance with paragraph (5)) effective at the date on which the pay statement is given.

(3) A standing statement of fixed deductions may be amended, whether by—

(a) addition of a new deduction,

(b) a change in the particulars, or

(c) cancellation of an existing deduction,

by notice in writing, containing particulars of the amendment, given by the employer to the employee.

(4) An employer who has given to an employee a standing statement of fixed deductions shall—

(a) within the period of twelve months beginning with the date on which the first standing statement was given, and

(b) at intervals of not more than twelve months afterwards,

re-issue it in a consolidated form incorporating any amendments notified in accordance with paragraph (3).

(5) For the purposes of paragraph (2)(c) a standing statement of fixed deductions—

(a) becomes effective on the date on which it is given to the employee, and

(b) ceases to be effective at the end of the period of twelve months beginning with that date or, where it is re-issued in accordance with paragraph (4), with the end of the period of twelve months beginning with the date of the last re-issue.

Power to amend provisions about pay and standing statements

42. The Department may by order—

(a) vary the provisions of Articles 40 and 41 as to the particulars which must be included in a pay statement or a standing statement of fixed deductions by adding items to, or removing items from, the particulars listed in those Articles or by amending any such particulars, and

(b) vary the provisions of paragraphs (4) and (5) of Article 41 so as to shorten or extend the periods of twelve months referred to in those paragraphs, or those periods as varied from time to time under this Article.

Enforcement

References to industrial tribunals

43.—(1) Where an employer does not give an employee a statement as required by Article 33, 36 or 40 (either because he gives him no statement or because the statement he gives does not comply with what is required), the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the Article concerned.

(2) Where—

(a) a statement purporting to be a statement under Article 33 or 36, or a pay statement or a standing statement of fixed deductions purporting to comply with Article 40 or 41, has been given to an employee, and

(b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part,

either the employer or the employee may require the question to be referred to and determined by an industrial tribunal.

(3) For the purposes of this Article—

(a) a question as to the particulars which ought to have been included in the note required by Article 35 to be included in the statement under Article 33 does not include any question whether the employment is, has been or will be contracted-out employment (for the purposes of Part III of the Pension Schemes (Northern Ireland) Act 1993), and

(b) a question as to the particulars which ought to have been included in a pay statement or standing statement of fixed deductions does not include a question solely as to the accuracy of an amount stated in any such particulars.

(4) An industrial tribunal shall not consider a reference under this Article in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—

(a) before the end of the period of three months beginning with the date on which the employment ceased, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months.

Determination of references

44.—(1) Where, on a reference under Article 43(1), an industrial tribunal determines particulars as being those which ought to have been included or referred to in a statement given under Article 33 or 36, the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.

(2) On determining a reference under Article 43(2) relating to a m statement purporting to be a statement under Article 33 or 36, an industrial tribunal may—

(a) confirm the particulars as included or referred to in the statement given by the employer,

(b) amend those particulars, or

(c) substitute other particulars for them,

as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the tribunal.

(3) Where on a reference under Article 43 an industrial tribunal finds—

(a) that an employer has failed to give an employee any pay statement in accordance with Article 40, or

(b) that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that Article or Article 41,

the tribunal shall make a declaration to that effect.

(4) Where on a reference in the case of which paragraph (3) applies the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

(5) For the purposes of paragraph (4) a deduction is an unnotified deduction if it is made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of the deduction required by Article 40 or 41.

PART IV

PROTECTION OF WAGES

Deductions by employer

Right not to suffer unauthorised deductions

45.—(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this Article "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Paragraph (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this Article a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this Article an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This Article does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

Excepted deductions

46.—(1) Article 45 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—

(a) an overpayment of wages, or

(b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,

made (for any reason) by the employer to the worker.

(2) Article 45 does not apply to a deduction from a worker's wages made by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

(3) Article 45 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.

(4) Article 45 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—

(a) in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or

(b) otherwise with the prior agreement or consent of the worker signified in writing,

and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.

(5) Article 45 does not apply to a deduction from a worker's wages made by his employer where the worker has taken part in a strike or other industrial action and the deduction is made by the employer on account of the worker's having taken part in that strike or other action.

(6) Article 45 does not apply to a deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer:

Payments to employer

Right not to have to make payments to employer

47.—(1) An employer shall not receive a payment from a worker employed by him unless—

(a) the payment is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the payment.

(2) In this Article "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer receiving the payment in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) For the purposes of this Article a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the receipt of a payment on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(4) For the purposes of this Article an agreement or consent signified by a worker does not operate to authorise the receipt of a payment on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(5) Any reference in this Part to an employer receiving a payment from a worker employed by him is a reference to his receiving such a payment in his capacity as the worker's employer.

Excepted payments

48.—(1) Article 47 does not apply to a payment received from a worker by his employer where the purpose of the payment is the reimbursement of the employer in respect of—

(a) an overpayment of wages, or

(b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,

made (for any reason) by the employer to the worker.

(2) Article 47 does not apply to a payment received from a worker by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

(3) Article 47 does not apply to a payment received from a worker by his employer where the worker has taken part in a strike or other industrial action and the payment has been required by the employer on account of the worker's having taken part in that strike or other action.

(4) Article 47 does not apply to a payment received from a worker by his employer where the purpose of the payment is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer.

Cash shortages and stock deficiencies in retail employment

Introductory

49.—(1) In the following provisions of this Part—

"cash shortage" means a deficit arising in relation to amounts received in connection with retail transactions, and

"stock deficiency" means a stock deficiency arising in the course of retail transactions.

(2) In the following provisions of this Part "retail employment", in relation to a worker, means employment involving (whether or not on a regular basis)—

(a) the carrying out by the worker of retail transactions directly with members of the public or with fellow workers or other individuals in their personal capacities, or

(b) the collection by the worker of amounts payable in connection with retail transactions carried out by other persons directly with members of the public or with fellow workers or other individuals in their personal capacities.

(3) References in this Article to a "retail transaction" are to the sale or supply of goods or the supply of services (including financial services).

(4) References in the following provisions of this Part to a deduction made from wages of a worker in retail employment, or to a payment received from such a worker by his employer, on account of a cash shortage or stock deficiency include references to a deduction or payment so made or received on account of—

(a) any dishonesty or other conduct on the part of the worker which resulted in any such shortage or deficiency, or

(b) any other event in respect of which he (whether or not together with any other workers) has any contractual liability and which so resulted,

in each case whether or not the amount of the deduction or payment is designed to reflect the exact amount of the shortage or deficiency.

(5) References in the following provisions of this Part to the recovery from a worker of an amount in respect of a cash shortage or stock deficiency accordingly include references to the recovery from him of an amount in respect of any such conduct or event as is mentioned in paragraph (4)(a) or (b).

(6) In the following provisions of this Part "pay day", in relation to a worker, means a day on which wages are payable to the worker.

Limits on amount and time of deductions

50.—(1) Where (in accordance with Article 45) the employer of a worker in retail employment makes, on account of one or more cash shortages or stock deficiencies, a deduction or deductions from wages payable to the worker on a pay day, the amount or aggregate amount of the deduction or deductions shall not exceed one-tenth of the gross amount of the wages payable to the worker on that day.

(2) Where the employer of a worker in retail employment makes a deduction from the worker's wages on account of a cash shortage or stock deficiency, the employer shall not be treated as making the deduction in accordance with Article 45 unless (in addition to the requirements of that Article being satisfied with respect to the deduction)—

(a) the deduction is made, or

(b) in the case of a deduction which is one of a series of deductions relating to the shortage or deficiency, the first deduction in the series was made,

not later than the end of the relevant period.

(3) In paragraph (2) "the relevant period" means the period of twelve months beginning with the date when the employer established the existence of the shortage or deficiency or (if earlier) the date when he ought reasonably to have done so.

Wages determined by reference to shortages etc.

51.—(1) This Article applies where—

(a) by virtue of an agreement between a worker in retail employment and his employer, the amount of the worker's wages or any part of them is or may be determined by reference to the incidence of cash shortages or stock deficiencies, and

(b) the gross amount of the wages payable to the worker on any pay day is, on account of any such shortages or deficiencies, less than the gross amount of the wages that would have been payable to him on that day if there had been no such shortages or deficiencies.

(2) The amount representing the difference between the two amounts referred to in paragraph (1)(b) shall be treated for the purposes of this Part as a deduction from the wages payable to the worker on that day made by the employer on account of the cash shortages or stock deficiencies in question.

(3) The second of the amounts referred to in paragraph (1)(b) shall be treated for the purposes of this Part (except paragraph (1)) as the gross amount of the wages payable to him on that day.

(4) Accordingly—

(a) Article 45, and

(b) if the requirements of Article 45 and paragraph (2) of Article 50 are satisfied, paragraph (1) of Article 50,

have effect in relation to the amount referred to in paragraph (2) of this Article.

Limits on method and timing of payments

52.—(1) Where the employer of a worker in retail employment receives from the worker a payment on account of a cash shortage or stock deficiency, the employer shall not be treated as receiving the payment in accordance with Article 47 unless (in addition to the requirements of that Article being satisfied with respect to the payment) he has previously—

(a) notified the worker in writing of the worker's total liability to him in respect of that shortage or deficiency, and

(b) required the worker to make the payment by means of a demand for payment made in accordance with the following provisions of this Article.

(2) A demand for payment made by the employer of a worker in retail employment in respect of a cash shortage or stock deficiency—

(a) shall be made in writing, and

(b) shall be made on one of the worker's pay days.

(3) A demand for payment in respect of a particular cash shortage or stock deficiency, or (in the case of a series of such demands) the first such demand, shall not be made—

(a) earlier than the first pay day of the worker following the date when he is notified of his total liability in respect of the shortage or deficiency in pursuance of paragraph (1)(a) or, where he is so notified on a pay day, earlier than that day, or

(b) later than the end of the period of twelve months beginning with the date when the employer established the existence of the shortage or deficiency or (if earlier) the date when he ought reasonably to have done so.

(4) For the purposes of this Part a demand for payment shall be treated as made by the employer on one of a worker's pay days if it is given to the worker or posted to, or left at, his last known address—

(a) on that pay day, or

(b) in the case of a pay day which is not a working day of the employer's business, on the first such working day following that pay day.

(5) Legal proceedings by the employer of a worker in retail employment for the recovery from the worker of an amount in respect of a cash shortage or stock deficiency shall not be instituted by the employer after the end of the period referred to in paragraph (3)(b) unless the employer has within that period made a demand for payment in respect of that amount in accordance with this Article.

Limit on amount of payments

53.—(1) Where the employer of a worker in retail employment makes on any pay day one or more demands for payment in accordance with Article 52, the amount or aggregate amount required to be paid by the worker in pursuance of the demand or demands shall not exceed—

(a) one-tenth of the gross amount of the wages payable to the worker on that day, or

(b) where one or more deductions falling within Article 50(1) are made by the employer from those wages, such amount as represents the balance of that one-tenth after subtracting the amount or aggregate amount of the deduction or deductions.

(2) Once an amount has been required to be paid by means of a demand for payment made in accordance with Article 52 on any pay day, that amount shall not be taken into account under paragraph (1) as it applies to any subsequent pay day, even though the employer is obliged to make further requests for it to be paid.

(3) Where in any legal proceedings the court finds that the employer of a worker in retail employment is (in accordance with Article 47 as it applies apart from Article 52(1)) entitled to recover an amount from the worker in respect of a cash shortage or stock deficiency, the court shall, in ordering the payment by the worker to the employer of that amount, make such provision as appears to the court to be necessary to ensure that it is paid by the worker at a rate not exceeding that at which it could be recovered from him by the employer in accordance with this Article.

Final instalments of wages

54.—(1) In this Article "final instalment of wages", in relation to a worker, means—

(a) the amount of wages payable to the worker which consists of or includes an amount payable by way of contractual remuneration in respect of the last of the periods for which he is employed under his contract prior to its termination for any reason (but excluding any wages referable to any earlier such period), or

(b) where an amount in lieu of notice is paid to the worker later than the amount referred to in sub-paragraph (a), the amount so paid,

in each case whether the amount in question is paid before or after the termination of the worker's contract.

(2) Article 50(1) does not operate to restrict the amount of any deductions which may (in accordance with Article 45(1)) be made by the employer of a worker in retail employment from the worker's final instalment of wages.

(3) Nothing in Article 52 or 53 applies to a payment falling within Article 52(1) which is made on or after the day on which any such worker's final instalment of wages is paid; but (even if the requirements of Article 47 would otherwise be satisfied with respect to it) his employer shall not be treated as receiving any such payment in accordance with that Article if the payment was first required to be made after the end of the period referred to in Article 52(3)(b).

(4) Article 53(3) does not apply to an amount which is to be paid by a worker on or after the day on which his final instalment of wages is paid.

Enforcement

Complaints to industrial tribunals

55.—(1) A worker may present a complaint to an industrial q tribunal—

(a) that his employer has made a deduction from his wages in contravention of Article 45 (including a deduction made in contravention of that Article as it applies by virtue of Article 50(2)),

(b) that his employer has received from him a payment in contravention of Article 47 (including a payment received in contravention of that Article as it applies by virtue of Article 52(1)),

(c) that his employer has recovered from his wages by means of one or more deductions falling within Article 50(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or

(d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with Article 52) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under Article 53(1).

(2) Subject to paragraph (4), an industrial tribunal shall not consider a complaint under this Article unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this Article in respect of — —

(a) a series of deductions or payments, or

(b) a number of payments falling within paragraph (1)(d) and made in pursuance of demands for payment subject to the same limit under Article 53(1) but received by the employer on different dates,

the references in paragraph (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(4) Where the industrial tribunal is satisfied that it was not reasonably practicable for a complaint under this Article to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

Determination of complaints

56. Where a tribunal finds a complaint under Article 55 well-founded, it shall make a declaration to that effect and shall order the employer—

(a) in the case of a complaint under Article 55(1)(a), to pay to the worker the amount of any deduction made in contravention of Article 45,

(b) in the case of a complaint under Article 55(1)(b), to repay to the worker the amount of any payment received in contravention of Article 47,

(c) in the case of a complaint under Article 55(1)(c), to pay to the worker any amount recovered from him in excess of the limit mentioned in that provision, and

(d) in the case of a complaint under Article 55(1)(d), to repay to the worker any amount received from him in excess of the limit mentioned in that provision.

Determinations: supplementary

57.—(1) Where, in the case of any complaint under Article 55(1)(a), a tribunal finds that, although neither of the conditions set out in Article 45(1)(a) and (b) was satisfied with respect to the whole amount of the deduction, one of those conditions was satisfied with respect to any lesser amount, the amount of the deduction shall for the purposes of Article 56(a) be treated as reduced by the amount with respect to which that condition was satisfied.

(2) Where, in the case of any complaint under Article 55(1)(b), a tribunal finds that, although neither of the conditions set out in Article 47(1)(a) and (b) was satisfied with respect to the whole amount of the payment, one of those conditions was satisfied with respect to any lesser amount, the amount of the payment shall for the purposes of Article 56(b) be treated as reduced by the amount with respect to which that condition was satisfied.

(3) An employer shall not under Article 56 be ordered by a tribunal to pay or repay to a worker any amount in respect of a deduction or payment, or in respect of any combination of deductions or payments, in so far as it appears to the tribunal that he has already paid or repaid any such amount to the worker.

(4) Where a tribunal has under Article 56 ordered an employer to pay or repay to a worker any amount in respect of a particular deduction or payment falling within Article 55(1)(a) to (d), the amount which the employer is entitled to recover (by whatever means) in respect of the matter in relation to which the deduction or payment was originally made or received shall be treated as reduced by that amount.

(5) Where a tribunal has under Article 56 ordered an employer to pay or repay to a worker any amount in respect of any combination of deductions or payments falling within Article 55(1)(c) or (d), the aggregate amount which the employer is entitled to recover (by whatever means) in respect of the cash shortages or stock deficiencies in relation to which the deductions or payments were originally made or required to be made shall be treated as reduced by that amount.

Complaints and other remedies

58. Article 55 does not affect the jurisdiction of an industrial tribunal to consider a reference under Article 43 in relation to any deduction from the wages of a worker; but the aggregate of any amounts ordered by an industrial tribunal to be paid under Article 44(4) and under Article 56 (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.

Supplementary

Meaning of "wages" etc.

59.—(1) In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including—

(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,

(b) statutory sick pay under Part XI of the Social Security Contributions and Benefits (Northern Ireland) Act 1992,

(c) statutory maternity pay under Part XII of that Act,

(d) a guarantee payment under Article 60,

(e) any payment for time off under Part VII,

(f) remuneration on suspension on medical grounds under Article 96 and remuneration on suspension on maternity grounds under Article 100,

(g) any sum payable in pursuance of an order for reinstatement or re-engagement under Article 147,

(h) any sum payable in pursuance of an order for the continuation of a contract of employment under Article 165, and

(j) remuneration under a protective award made under Article 217,

but excluding any payments within paragraph (2).

(2) Those payments are—

(a) any payment by way of an advance under an agreement for a loan or by way of an advance of wages (but without prejudice to the application of Article 45 to any deduction made from the worker's wages in respect of any such advance),

(b) any payment in respect of expenses incurred by the worker in carrying out his employment,

(c) any payment by way of a pension, allowance or gratuity in connection with the worker's retirement or as compensation for loss of office,

(d) any payment referable to the worker's redundancy, and

(e) any payment to the worker otherwise than in his capacity as a worker.

(3) Where any payment in the nature of a non-contractual bonus is (for any reason) made to a worker by his employer, the amount of the payment shall for the purposes of this Part—

(a) be treated as wages of the worker, and

(b) be treated as payable to him as such on the day on which the payment is made.

(4) In this Part "gross amount", in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature.

(5) For the purposes of this Part any monetary value attaching to any payment or benefit in kind furnished to a worker by his employer shall not be treated as wages of the worker except in the case of any voucher, stamp or similar document which is—

(a) of a fixed value expressed in monetary terms, and

(b) capable of being exchanged (whether on its own or together with other vouchers, stamps or documents, and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things).

PART V

GUARANTEE PAYMENTS

Right to guarantee payment

60.—(1) Where throughout a day during any part of which an employee would normally be required to work in accordance with his contract of employment the employee is not provided with work by his employer by reason of—

(a) a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or

(b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,

the employee is entitled to be paid by his employer an amount in respect of that day.

(2) In this Order a payment to which an employee is entitled under paragraph (1) is referred to as a guarantee payment.

(3) In this Part—

(a) a day falling within paragraph (1) is referred to as a "workless day", and

(b) "workless period" has a corresponding meaning.

(4) In this Part "day" means the period of twenty-four hours from midnight to midnight.

(5) Where a period of employment begun on any day extends, or would normally extend, over midnight into the following day—

(a) if the employment before midnight is, or would normally be, of longer duration than that after midnight, the period of employment shall be treated as falling wholly on the first day, and

(b) in any other case, the period of employment shall be treated as falling wholly on the second day.

Exclusions from right to guarantee payment

61.—(1) An employee is not entitled to a guarantee payment unless he has been continuously employed for a period of not less than one month ending with the day before that in respect of which the guarantee payment is claimed.

(2) An employee who is employed—

(a) under a contract for a fixed term of three months or less, or

(b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

is not entitled to a guarantee payment unless he has been continuously employed for a period of more than three months ending with the day before that in respect of which the guarantee payment is claimed.

(3) An employee is not entitled to a guarantee payment in respect of a workless day if the failure to provide him with work for that day occurs in consequence of a strike, lock-out or other industrial action involving any employee of his employer or of an associated employer.

(4) An employee is not entitled to a guarantee payment in respect of a workless day if—

(a) his employer has offered to provide alternative work for that day which is suitable in all the circumstances (whether or not it is work which the employee is under his contract employed to perform), and

(b) the employee has unreasonably refused that offer.

(5) An employee is not entitled to a guarantee payment if he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

Calculation of guarantee payment

62.—(1) Subject to Article 63, the amount of a guarantee payment payable to an employee in respect of any day is the sum produced by multiplying the number of normal working hours on the day by the guaranteed hourly rate; and, accordingly, no guarantee payment is payable to an employee in whose case there are no normal working hours on the day in question.

(2) The guaranteed hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day in respect of which the guarantee payment is payable.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is payable, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

(4) The considerations referred to in paragraph (3)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, paragraphs (2) and (3) have effect as if for the references to the day in respect of which the guarantee payment is payable there were substituted references to the last day on which the original contract was in force.

Limits on amount of and entitlement to guarantee payment

63.—(1) The amount of a guarantee payment payable to an employee in respect of any day shall not exceed £14.50.

(2) An employee is not entitled to guarantee payments in respect of more than the specified number of days in any period of three months.

(3) The specified number of days for the purposes of paragraph (2) is the number of days, not exceeding five, on which the employee normally works in a week under the contract of employment in force on the day in respect of which the guarantee payment is claimed.

(4) But where that number of days varies from week to week or over a longer period, the specified number of days is instead—

(a) the average number of such days, not exceeding five, calculated by dividing by twelve the total number of such days during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is claimed, and rounding up the resulting figure to the next whole number, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of the employee's normal working days in a week, not exceeding five, having regard to such of the considerations specified in paragraph (5) as are appropriate in the circumstances.

(5) The considerations referred to in paragraph (4)(b) are—

(a) the average number of normal working days in a week which the employee could expect in accordance with the terms of his contract, and

(b) the average number of such days of other employees engaged in relevant comparable employment with the same employer.

(6) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, paragraphs (3) and (4) have effect as if for the references to the day in respect of which the guarantee payment is claimed there were substituted references to the last day on which the original contract was in force.

(7) The Department may by order vary any of the limits specified in this Article, and (in particular) vary the length of the period specified in paragraph (2).

Contractual remuneration

64.—(1) A right to a guarantee payment does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").

(2) Any contractual remuneration paid to an employee in respect of a workless day goes towards discharging any liability of the employer to pay a guarantee payment in respect of that day; and, conversely, any guarantee payment paid in respect of a day goes towards discharging any liability of the employer to pay contractual remuneration in respect of that day.

(3) For the purposes of paragraph (2), contractual remuneration shall be treated as paid in respect of a workless day—

(a) where it is expressed to be calculated or payable by reference to that day or any part of that day, to the extent that it is so expressed, and

(b) in any other case, to the extent that it represents guaranteed remuneration, rather than remuneration for work actually done, and is referable to that day when apportioned rateably between that day and any other workless period falling within the period in respect of which the remuneration is paid.

Power to modify provisions about guarantee payments

65. The Department may by order provide that in relation to any description of employees the provisions of—

(a) Articles 60(4) and (5), 62, 63(3) to (5) (as originally enacted or as varied under Article 63(7)) and 64, and

(b) so far as they apply for the purposes of those provisions, Article 5 and Chapter IV of Part I,

shall have effect subject to such modifications and adaptations as may be prescribed by the order.

Complaints to industrial tribunals

66.—(1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of a guarantee payment to which the employee is entitled.

(2) An industrial tribunal shall not consider a complaint relating to a guarantee payment in respect of any day unless the complaint is presented to the tribunal—

(a) before the end of the period of three months beginning with that day, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall order the employer to pay to the employee the amount of guarantee payment which it finds is due to him.

Exemption orders

67.—(1) Where—

(a) at any time there is in force a collective agreement, or an agricultural wages order, under which employees to whom the agreement or order relates have a right to guaranteed remuneration, and

(b) on the application of all the parties to the agreement, or of the Agricultural Wages Board for Northern Ireland, the appropriate Department (having regard to the provisions of the agreement or order) is satisfied that Article 60 should not apply to those employees,

it may make an order under this Article excluding those employees from the operation of that Article.

(2) In this Article "agricultural wages order" means an order made under Article 4 of the Agricultural Wages (Northern Ireland) Order 1977.

(3) In paragraph (1) "the appropriate Department" means—

(a) in relation to a collective agreement, the Department, and

(b) in relation to an agricultural wages order, the Department of Agriculture.

(4) The Department shall not make an order under this Article in respect of an agreement unless—

(a) the agreement provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee claims that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement and those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached, or

(b) the agreement indicates that an employee to whom the agreement relates may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement.

(5) Where an order under this Article is in force in respect of an agreement indicating as described in sub-paragraph (b) of paragraph (4) an industrial tribunal shall have jurisdiction over a complaint such as is mentioned in that sub-paragraph as if it were a complaint falling within Article 66.

(6) An order varying or revoking an earlier order under this Article may be made in pursuance of an application by all or any of the parties to the agreement in question, or the Agricultural Wages Board for Northern Ireland, or in the absence of such an application.

PART VI

PROTECTION FROM SUFFERING DETRIMENT ETC. IN EMPLOYMENT

CHAPTER I

RIGHTS NOT TO SUFFER DETRIMENT

Health and safety cases

68.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any statutory provision, or

(ii) by reason of being acknowledged as such by the employer,

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of paragraph (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) An employee is not to be regarded as having been subjected to any detriment on the ground specified in paragraph (1)(e) if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

(4) Except where an employee is dismissed in circumstances in which, by virtue of Article 240, Part XI does not apply to the dismissal, this Article does not apply where the detriment in question amounts to dismissal (within the meaning of that Part).

Trustees of occupational pension schemes

69.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) Except where an employee is dismissed in circumstances in which, by virtue of Article 240, Part XI does not apply to the dismissal, this Article does not apply where the detriment in question amounts to dismissal (within the meaning of that Part).

(3) In this Article "relevant occupational pension scheme" means an occupational pension scheme (as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993) established under a trust.

Employee representatives

70.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being—

(a) an employee representative for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

he performed (or proposed to perform) any functions or activities as such an employee representative or candidate.

(2) Except where an employee is dismissed in circumstances in which, by virtue of Article 240, Part XI does not apply to the dismissal, this Article does not apply where the detriment in question amounts to a dismissal (within the meaning of that Part).

Complaints to industrial tribunals

71.—(1) An employee may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 68,69 or 70.

(2) On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of paragraph (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

Remedies

72.—(1) Where an industrial tribunal finds a complaint under Article 71 well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the infringement to which the complaint relates, and

(b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

(3) The loss shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates, and

(b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.
CHAPTER II

CHAPTER II

ACTION SHORT OF DISMISSAL

Action short of dismissal on grounds related to union membership or activities

73.—(1) An employee has the right not to have action short of dismissal taken against him as an individual by his employer for the purpose of—

(a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so.

(b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so, or

(c) compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

(2) In paragraph (1)(b) "an appropriate time" means—

(a) a time outside the employee's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union;

and for this purpose "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) An employee also has the right not to have action short of dismissal taken against him for the purpose of enforcing a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments.

(4) For the purposes of paragraph (3) any deduction made by an employer from the remuneration payable to an employee in respect of his employment shall, if it is attributable to his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, be treated as action short of dismissal taken against him for the purpose of enforcing a requirement of a kind mentioned in that paragraph.

(5) References in this Chapter to being or becoming a member of a trade union include references to being or becoming a member of a particular branch or section of that union and to being or becoming a member of one of a number of particular branches or sections of that union; and references to taking part in the activities of a trade union shall be similarly construed.

Complaints to industrial tribunal

74.—(1) An employee may present a complaint to an industrial tribunal on the ground that action has been taken against him by his employer in contravention of Article 73.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

(a) before the end of the period of three months beginning with the date of the action to which the complaint relates or, where that action is part of a series of similar actions, the last of those actions, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

Consideration of complaint

75.—(1) On a complaint under Article 74 it shall be for the employer to show the purpose for which action was taken against the complainant.

(2) In determining any question whether action was taken by the employer or the purpose for which it was taken, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(3) In determining what was the purpose for which action was taken by the employer against the complainant in a case where—

(a) there is evidence that the employer's purpose was to further a change in his relationship with all or any class of his employees, and

(b) there is also evidence that his purpose was one falling within Article 73,

the tribunal shall regard the purpose mentioned in sub-paragraph (a) (and not the purpose mentioned in sub-paragraph (b)) as the purpose for which the employer took the action, unless it considers that the action was such as no reasonable employer would take having regard to the purpose mentioned in sub-paragraph (a).

(4) Where the action which the tribunal determines to have been the action taken against the complainant was action taken in consequence of previous action by the employer sub-paragraph (a) of paragraph (3) is satisfied if the purpose mentioned in that sub-paragraph was the purpose of the previous action.

(5) In paragraph (3) "class", in relation to an employer and his employees, means those employed at a particular place of work, those employees of a particular grade, category or description or those of a particular grade, category or description employed at a particular place of work.

Remedies

76.—(1) Where the industrial tribunal finds that a complaint under Article 74 is well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the complainant in respect of the action complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the infringement complained of; and

(b) any loss sustained by the complainant which is attributable to the action which infringed his right.

(3) The loss shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the action complained of, and

(b) loss of any benefit which he might reasonably be expected to have had but for that action.

(4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) In determining the amount of compensation to be awarded no account shall be taken of any pressure which was exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(6) Where the tribunal finds that the action complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

Awards against third parties

77.—(1) If in proceedings on a complaint under Article 74—

(a) the complaint is made on the ground that action has been taken against the complainant by his employer for the purpose of compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions, and

(b) either the complainant or the employer claims in proceedings before the tribunal that the employer was induced to take the action complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so,

the complainant or the employer may request the tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made a declaration that the complaint is well-founded.

(3) Where a person has been so joined as a party to proceedings and the tribunal—

(a) makes an award of compensation, and

(b) finds that the claim mentioned in paragraph (1)(b) is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable in the circumstances.

PART VII

TIME OFF WORK

Public duties

Right to time off for public duties

78.—(1) An employer shall permit an employee of his who is a justice of the peace to take time off during the employee's working hours for the purpose of performing any of the duties of his office.

(2) An employer shall permit an employee of his who is a member of—

(a) a district council,

(b) a statutory tribunal,

(c) a relevant prison visiting authority,

(d) a relevant health body, or

(e) a relevant education body,

to take time off during the employee's working hours for the purposes specified in paragraph (3).

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

(a) attendance at a meeting of the body or any of its committees or sub-committees, and

(b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.

(4) The amount of time off which an employee is to be permitted to take under this Article, and the occasions on which and any conditions subject to which time off may be so taken, are those that are reasonable in all the circumstances having regard, in particular,

(a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty,

(b) how much time off the employee has already been permitted under this Article or Article 92 or 94, and

(c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

(5) In paragraph (2)(c) "a relevant prison visiting authority" means—

(a) a board of visitors appointed under section 10 of the Prison Act (Northern Ireland) 1953, or

(b) a visiting committee appointed under section 3 of the Treatment of Offenders Act (Northern Ireland) 1968.

(6) In paragraph (2)(d) "a relevant health body" means—

(a) a Health and Social Services Board; or

(b) a Health and Social Services Trust.

(7) In paragraph (2)(e) "a relevant education body" means—

(a) an education and library board;

(b) the Council for Catholic Maintained Schools;

(c) the Northern Ireland Council for the Curriculum, Examinations and Assessment,

(d) the Board of Governors of a grant-aided school,

(e) the governing body of an institution of further education, or

(f) the managers of a college of education.

(8) The Department may by order—

(a) modify the provisions of paragraphs (1) and (2) and (5) to (7) by adding any office or body, removing any office or body or altering the description of any office or body, or

(b) modify the provisions of paragraph (3).

(9) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Complaints to industrial tribunals

79.—(1) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by Article 78.

(2) An industrial tribunal shall not consider a complaint under this Article that an employer has failed to permit an employee to take time off unless it is presented—

(a) before the end of the period of three months beginning with the date on which the failure occurred, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the employee.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard

(a) the employer's default in failing to permit time off to be taken by the employee, and

(b) any loss sustained by the employee which is attributable to the matters to which the complaint relates.

Looking for work and making arrangements for training

Right to time off to look for work or arrange training

80.—(1) An employee who is given notice of dismissal by reason of redundancy is entitled to be permitted by his employer to take reasonable time off during the employee's working hours before the end of his notice in order to—

(a) look for new employment, or

(b) make arrangements for training for future employment.

(2) An employee is not entitled to take time off under this Article unless, on whichever is the later of—

(a) the date on which the notice is due to expire, and

(b) the date on which it would expire were it the notice required to T be given by Article 118(1),

he will have been (or would have been) continuously employed for a period of two years or more.

(3) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Right to remuneration for time off under Article 80

81.—(1) An employee who is permitted to take time off under Article 80 is entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the notice of dismissal was given.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the notice was given.

(4) If an employer unreasonably refuses to permit an employee to take time off from work as required by Article 80, the employee is entitled to be paid an amount equal to the remuneration to which he would have been entitled under paragraph (1) if he had been permitted to take the time off.

(5) The amount of an employer's liability to pay remuneration under paragraph (1) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.

(6) A right to any amount under paragraph (1) or (4) does not affect any right of an employee in relation to remuneration under his contract of employment ((“contractual remuneration”).

(7) Any contractual remuneration paid to an employee in respect of a period of time off under Article 80 goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Complaints to industrial tribunals

82.—(1) An employee may present a complaint to an industrial tribunal that his employer—

(a) has unreasonably refused to permit him to take time off as required by Article 80, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 81(1) or (4).

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

(a) before the end of the period of three months beginning with the date on which it is alleged that the time off should have been permitted, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall—

(a) make a declaration to that effect, and

(b) order the employer to pay to the employee the amount which it finds due to him.

(4) The amount which may be ordered by a tribunal to be paid by an employer under paragraph (3) (or, where the employer is liable to pay remuneration under Article 81, the aggregate of that amount and the amount of that liability) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.

Ante-natal care

Right to time off for ante-natal care

83.—(1) An employee who—

(a) is pregnant, and

(b) has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care,

is entitled to be permitted by her employer to take time off during the employee's working hours in order to enable her to keep the appointment.

(2) An employee is not entitled to take time off under this Article to keep an appointment unless, if her employer requests her to do so, she produces for his inspection—

(a) a certificate from a registered medical practitioner, registered midwife or registered health visitor stating that the employee is pregnant, and

(b) an appointment card or some other document showing that the appointment has been made.

(3) Paragraph (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with paragraph (1).

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with her contract of employment, the employee is required to be at work.

Right to remuneration for time off under Article 83

84.—(1) An employee who is permitted to Article 83 is entitled to be paid remuneration by period of absence at the appropriate hourly rate. take time off under her employer for the

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

(4) The considerations referred to in paragraph (3)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under her contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 83 goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Complaints to industrial tribunals

85.—(1) An employee may present a complaint to an industrial tribunal that her employer—

(a) has unreasonably refused to permit her to take time off as required by Article 83, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 84.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

(a) before the end of the period of three months beginning with the date of the appointment concerned, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which she would have been entitled under Article 84 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under Article 84, the tribunal shall also order the employer to pay to the employee the amount which it finds due to her.

Occupational pension scheme trustees

Right to time off for pension scheme trustees

86.—(1) The employer in relation to a relevant occupational pension scheme shall permit an employee of his who is a trustee of the scheme to take time off during the employee's working hours for the purpose of—

(a) performing any of his duties as such a trustee, or 88

(b) undergoing training relevant to the performance of those duties.

(2) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard, in particular, to—

(a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or for undergoing the particular training, and

(b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

(3) In this Article—

(a) "relevant occupational pension scheme" means an occupational pension scheme (as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993) established under a trust, and

(b) references to the employer, in relation to such a scheme, are to an employer of persons in the description or category of employment to which the scheme relates.

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Right to payment for time off under Article 86

87.—(1) An employer who permits an employee to take time off under Article 86 shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in paragraph (3) are—

(a) those of the employee concerned, or

(b) if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 86 goes towards discharging any liability of the employer under paragraph (1) in respect of that period; and, conversely, any payment under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Complaints to industrial tribunals

88.—(1) An employee may present a complaint to an industrial tribunal that his employer—

(a) has failed to permit him to take time off as required by Article 86, or

(b) has failed to pay him in accordance with Article 87.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

(a) before the end of the period of three months beginning with the date when the failure occurred, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the employee.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the employer's default in failing to permit time off to be taken by the employee, and

(b) any loss sustained by the employee which is attributable to the matters complained of.

(5) Where on a complaint under paragraph (1)(b) an industrial tribunal finds that an employer has failed to pay an employee in accordance with Article 87, it shall order the employer to pay the amount which it finds to be due.

Employee representatives

Right to time off for employee representatives

89.—(1) An employee who is—

(a) an employee representative for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such an employee representative or candidate.

(2) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Right to remuneration for time off under Article 89

90.—(1) An employee who is permitted to take time off under Article 89 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

(4) The considerations referred to in paragraph (3)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 89 goes towards discharging any liability of the employer to pay remuneration

under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Complaints to industrial tribunals

91.—(1) An employee may present a complaint to an industrial tribunal that his employer—

(a) has unreasonably refused to permit him to take time off as required by Article 89, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 90.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

(a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under Article 90 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under Article 90, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.

Trade union duties and activities

Right to time off for carrying out trade union duties

92.—(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with—

(a) negotiations with the employer related to or connected with matters falling within Article 96(1) of the 1992 Order in relation to which the trade union is recognised by the employer, or

(b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union.

(2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations—

(a) relevant to the carrying out of such duties as are mentioned q in paragraph (1), and

(b) approved by the Northern Ireland Committee of the Irish Congress of Trade Unions or by the independent trade union of which he is an official.

(3) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Right to remuneration for time off under Article 92

93.—(1) An employer who permits an employee to take time off under Article 92 shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in paragraph (3) are—

(a) those of the employee concerned, or

(b) if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 92 goes towards discharging any liability of the employer under paragraph (1) in respect of that period; and, conversely, any payment under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Right to time off for trade union activities

94.—(1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in—

(a) any activities of the union, and

(b) any activities in relation to which the employee is acting as a representative of the union.

(2) The right conferred by paragraph (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.

(3) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Complaints to industrial tribunals

95.—(1) An employee may present a complaint to an industrial tribunal that his employer—

(a) has failed to permit him to take time off as required by Article 92 or 94, or

(b) has failed to pay him in accordance with Article 93.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

(a) before the end of the period of three months beginning with the date when the failure occurred, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the employee.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard

(a) the employer's default in failing to permit time off to be taken by the employee, and

(b) any loss sustained by the employee which is attributable to the matters complained of.

(5) Where on a complaint under paragraph (1)(b) an industrial tribunal finds that an employer has failed to pay an employee in accordance with Article 93, it shall order the employer to pay the amount which it finds to be due.

PART VIII

SUSPENSION FROM WORK

Suspension on medical grounds

Right to remuneration on suspension on medical grounds

96.—(1) An employee who is suspended from work by his employer on medical grounds is entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding twenty-six weeks.

(2) For the purposes of this Part an employee is suspended from work on medical grounds if he is suspended from work in consequence of—

(a) a requirement imposed by or under any statutory provision, or

(b) a recommendation in a provision of a code of practice issued or approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978,

and the provision is for the time being specified in paragraph (3).

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

Regulation 2 of the Manufacture and Decoration of Pottery Regulations 1913,

Regulation 16 of the Ionising Radiations Regulations (Northern Ireland) 1985,

Regulation 16 of the Control of Lead at Work Regulations (Northern Ireland) 1986,

Regulation 11 of the Control of Substances Hazardous to Health Regulations (Northern Ireland) 1995.

(4) The Department may by order add provisions to or remove provisions from the list of provisions specified in paragraph (3).

(5) For the purposes of this Part an employee shall be regarded as suspended from work on medical grounds only if and for so long as he—

(a) continues to be employed by his employer, but

(b) is not provided with work or does not perform the work he normally performed before the suspension.

Exclusions from right to remuneration

97.—(1) An employee is not entitled to remuneration under Article 96 unless he has been continuously employed for a period of not less than one month ending with the day before that on which the suspension begins.

(2) An employee who is employed—

(a) under a contract for a fixed term of three months or less, or

(b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

is not entitled to remuneration under Article 96 unless he has been continuously employed for a period of more than three months ending with the day before that on which the suspension begins.

(3) An employee is not entitled to remuneration under Article 96 in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.

(4) An employee is not entitled to remuneration under Article 96 in respect of any period if—

(a) his employer has offered to provide him with suitable alternative work during the period (whether or not it is work which the employee is under his contract, or was under the contract in force before the suspension, employed to perform) and the employee has unreasonably refused to perform that work, or

(b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

Suspension on maternity grounds

Meaning of suspension on maternity grounds

98.—(1) For the purposes of this Part an employee is suspended from work on maternity grounds if, in consequence of any relevant requirement or relevant recommendation, she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

(2) In paragraph (1)—

"relevant requirement" means a requirement imposed by or under a specified statutory provision, and

"relevant recommendation" means a recommendation in a specified provision of a code of practice issued or approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978;

and in this paragraph "specified" means for the time being specified in an order made by the Department under this paragraph.

(3) For the purposes of this Part an employee shall be regarded as suspended from work on maternity grounds only if and for so long as she—

(a) continues to be employed by her employer, but

(b) is not provided with work or (disregarding alternative work for the purposes of Article 99) does not perform the work she normally performed before the suspension.

Right to offer of alternative work

99.—(1) Where an employer has available suitable alternative work for an employee, the employee has a right to be offered to be provided with the alternative work before being suspended from work on maternity grounds.

(2) For alternative work to be suitable for an employee for the purposes of this Article—

(a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances, and

(b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

Right to remuneration

100.—(1) An employee who is suspended from work on maternity grounds is entitled to be paid remuneration by her employer while she is so suspended.

(2) An employee is not entitled to remuneration under this Article in respect of any period if—

(a) her employer has offered to provide her during the period with work which is suitable alternative work for her for the purposes of Article 99, and

(b) the employee has unreasonably refused to perform that work.

General

Calculation of remuneration

101.—(1) The amount of remuneration payable by an employer to an employee under Article 96 or 100 is a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect of only part of that week the amount of a week's pay shall be reduced proportionately.

(2) A right to remuneration under Article 96 or 100 does not affect any right of an employee in relation to remuneration under the employee's contract of employment ("contractual remuneration").

(3) Any contractual remuneration paid by an employer to an employee in respect of any period goes towards discharging the employer's liability under Article 96 or 100 in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under Article 96 or 100 in respect of any period goes towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

Complaints to industrial tribunals

102.—(1) An employee may present a complaint to an industrial tribunal that his or her employer has failed to pay the whole or any part of remuneration to which the employee is entitled under Article 96 or 100.

(2) An industrial tribunal shall not consider a complaint under paragraph (1) relating to remuneration in respect of any day unless it is presented—

(a) before the end of the period of three months beginning with that day, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of three months.

(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, the tribunal shall order the employer to pay the employee the amount of remuneration which it finds is due to him or her.

(4) An employee may present a complaint to an industrial tribunal that in contravention of Article 99 her employer has failed to offer to provide her with work.

(5) An industrial tribunal shall not consider a complaint under paragraph (4) unless it is presented—

(a) before the end of the period of three months beginning with the first day of the suspension, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of three months.

(6) Where an industrial tribunal finds a complaint under paragraph (4) well-founded, the tribunal may make an award of compensation to be paid by the employer to the employee.

(7) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard

(a) the infringement of the employee's right under Article 99 by the failure on the part of the employer to which the complaint relates, and

(b) any loss sustained by the employee which is attributable to that failure.

PART IX

MATERNITY RIGHTS

General right to maternity leave

General right to maternity leave

103.—(1) An employee who is absent from work at any time during her maternity leave period is (subject to Articles 106 and 107) entitled to the benefit of the terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).

(2) Paragraph (1) does not confer any entitlement to remuneration.

Commencement of maternity leave period

104.—(1) Subject to paragraph (2), an employee's maternity leave period commences with the earlier of—

(a) the date which, in accordance with Article 106(1) to (3), she notifies to her employer as the date on which she intends her period of absence from work in exercise of the right conferred by Article 103 to commence, and

(b) the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy.

(2) Where the employee's maternity leave period has not commenced by virtue of paragraph (1) when childbirth occurs, her maternity leave period commences with the day on which childbirth occurs.

(3) The Department may by order vary paragraphs (1) and (2).

Duration of maternity leave period

105.—(1) Subject to paragraphs (2) and (3), an employee's maternity leave period continues for the period of fourteen weeks from its commencement or until the birth of the child, if later.

(2) Subject to paragraph (3), where any requirement imposed by or under any relevant statutory provision prohibits the employee from working for any period after the end of the period mentioned in paragraph (1) by reason of her having recently given birth, her maternity leave period continues until the end of that later period.

(3) Where the employee is dismissed after the commencement of her maternity leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the dismissal.

(4) In paragraph (2) "relevant statutory provision" means a statutory provision other than a provision for the time being specified in an order made under Article 98(2).

(5) The Department may by order vary paragraphs (1) to (4).

Requirement to notify commencement of leave

106.—(1) Subject to paragraphs (4) and (5), an employee does not have the right conferred by Article 103 unless she notifies her employer of the date on which she intends her period of absence from work in exercise of the right to commence.

(2) No date occurring before the beginning of the eleventh week before the expected week of childbirth may be notified under paragraph (1).

(3) Notification under paragraph (1) shall be given by an employee—

(a) not less than twenty-one days before the date on which she intends her period of absence from work in exercise of the right conferred by Article 103 to commence, or

(b) if that is not reasonably practicable, as soon as is reasonably practicable.

(4) Where an employee's maternity leave period commences with the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy—

(a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but

(b) (whether or not she has notified him of that date) she does not have the right conferred by Article 103 unless she notifies him as soon as is reasonably practicable that she is absent from work wholly or partly because of pregnancy.

(5) Where an employee's maternity leave period commences with the day on which childbirth occurs—

(a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but

(b) (whether or not she has notified him of that date) she does not have the right conferred by Article 103 unless she notifies him as soon as is reasonably practicable after the birth that she has given birth.

(6) Any notification required by this Article shall, if the employer so requests, be given in writing.

Requirement to notify pregnancy etc.

107.—(1) An employee does not have the right conferred by Article 103 unless at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable, she informs her employer in writing of—

(a) her pregnancy, and

(b) the expected week of childbirth,

or, if childbirth has occurred, of the date on which it occurred.

(2) An employee does not have the right conferred by Article 103 unless, if requested to do so by her employer, she produces for his inspection a certificate from—

(a) a registered medical practitioner, or

(b) a registered midwife,

stating the expected week of childbirth.

Requirement to notify return during maternity leave period

108.—(1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days' notice of the date on which she intends to return.

(2) If an employee attempts to return to work earlier than the end of her maternity leave period without complying with paragraph (1). her employer shall be entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has seven days' notice of her return.

(3) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of her maternity leave period.

(4) If an employee whose return to work has been postponed under paragraph (2) has been notified that she is not to return to work before the date to which her return was postponed, the employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.

Redundancy during maternity leave period

109.—(1) This Article applies where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment.

(2) e is a suitable available vacancy, the employee is entitled to be offered (before the ending of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that—

(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and

(b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.

Contractual rights to maternity leave

110.—(1) An employee who has both the right to maternity leave under Article 103 and another right to maternity leave (under a contract of employment or otherwise) may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of Articles 104 to 109 apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (1) as they apply to the exercise of the right under Article 103.

Right to return to work

Right to return to work

111.—(1) An employee who—

(a) has the right conferred by Article 103, and

(b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than two years,

also has the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.

(2) An employee's right to return to work under this Article is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed—

(a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her maternity leave period,

(b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work (but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (credit for the period of absence in certain cases)), and

(c) otherwise on terms and conditions not less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period.

(3) The Department may by order vary the period of two years specified in paragraph (1) or that period as varied by an order under this paragraph.

Requirement to notify return

112.—(1) An employee does not have the right conferred by Article 111 unless she includes with the information required by Article 107(1) the information that she intends to exercise the right.

(2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with paragraph (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right conferred by Article 111, the employee is not entitled to that right unless she gives the requested confirmation—

(a) within fourteen days of receiving the request, or

(b) if that is not reasonably practicable, as soon as is reasonably practicable.

(3) A request under paragraph (2) shall be—

(a) made in writing, and

(b) accompanied by a written statement of the effect of that paragraph.

Redundancy before return

113.—(1) This Article applies where an employee has the right conferred by Article 111 but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3).

(3) The new contract of employment must be such that—

(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and

(b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had returned to work pursuant to the right conferred by Article 111.

Exercise of right to return

114.—(1) An employee shall exercise the right conferred by Article 111 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (the "notified day of return").

(2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date; and, accordingly, she will be entitled to return to work with him on that date.

(3) An employee to whom paragraph (4) applies may—

(a) postpone her return to work until a date not more than four weeks after the notified day of return (even if that date falls after the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred), and

(b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with paragraph (1), so that she returns to work not more than four weeks after the end of that period of twenty-nine weeks.

(4) This paragraph applies to an employee if she gives to her employer, before the notified day of return (or the end of the period of twenty-nine weeks), a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return (or at the end of that period).

(5) Where an employee has once exercised a right of postponement or extension under paragraph (3), she is not entitled again to exercise a right of postponement or extension under that paragraph in connection with the same return to work.

(6) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable afterwards.

(7) Where in the case of an employee who has not already notified a day of return—

(a) there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect, and

(b) in consequence, the employee does not notify a day of return,

the employee may exercise her right to return in accordance with paragraph (1) so that she returns to work at any time before the end of the period of twenty-eight days after the end of the interruption even though that means that she returns to work outside the period of twenty-nine weeks.

(8) Where an employee has exercised the right under paragraph (3)(b) to extend the period during which she may exercise her right to return, paragraph (7) applies as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the further period of four weeks after the end of that period.

(9) Where in the case of an interruption of work an employee has refrained from notifying the day of return in the circumstances described in paragraph (7), paragraph (3)(b) applies as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the period of twenty-eight days after the end of the interruption of work.

Notified day of return

115.—(1) Subject to paragraph (2), in this Order "notified day of return" shall be construed in accordance with Article 114(1).

(2) Where—

(a) an employee's return is postponed under paragraph (2) or (3)(a) of Article 114, or

(b) the employee returns to work on a day later than the notified day of return in the circumstances described in paragraph (6) of that Article,

then, subject to paragraph (5) of that Article, references in paragraphs (2), (3)(a) and (6) of that Article and the following provisions of this Order to the notified day of return shall be construed as references to the day to which the return is postponed or that later day.

Employee dismissed at or after end of maternity leave period

116.—(1) This Article applies where an employee has the right to return to work conferred by Article 111 and either—

(a) her maternity leave period ends by reason of dismissal, or

(b) she is dismissed after the end of her maternity leave period, otherwise than in the course of attempting to return to work in accordance with her contract in circumstances in which Article 117 applies.

(2) Where this Article applies, the right conferred by Article 111 is exercisable only on the employee repaying any compensation for unfair dismissal, or redundancy payment, paid in respect of the dismissal if the employer requests repayment.

Contractual rights to return

117.—(1) An employee who has both the right to return to work conferred by Article 111 and another right to return to work after absence because of pregnancy or childbirth (under a contract of employment or otherwise) may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.

(2) Articles 111 and 113 to 116, and the provisions of the following Parts of this Order relating to the right conferred by Article 111 (other than Article 172(2)), apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (1) as they apply to the exercise of the right conferred by Article 111.

PART X

TERMINATION OF EMPLOYMENT

Minimum period of notice

Rights of employer and employee to minimum notice

118.—(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

(a) is not less than one week's notice if his period of continuous employment is less than two years,

(b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and

(c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.

(2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.

(3) Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more has effect subject to paragraphs (1) and (2); but this Article does not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.

(4) Any contract of employment of a person who has been continuously employed for three months or more which is a contract for a term certain of one month or less shall have effect as if it were for an indefinite period; and, accordingly, paragraphs (1) and (2) apply to the contract.

(5) Paragraphs (1) and (2) do not apply to a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months unless the employee has been continuously employed for a period of more than three months.

(6) This Article does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.

Rights of employee in period of notice

119.—(1) If an employer gives notice to terminate the contract of employment of a person who has been continuously employed for one month or more, the provisions of Articles 120 to 123 have effect as respects the liability of the employer for the period of notice required by Article 118(1).

(2) If an employee who has been continuously employed for one month or more gives notice to terminate his contract of employment, the provisions of Articles 120 to 123 have effect as respects the liability of the employer for the period of notice required by Article 118(2).

(3) In Articles 120 to 123 "period of notice" means—

(a) where notice is given by an employer, the period of notice required by Article 118(1), and

(b) where notice is given by an employee, the period of notice required by Article 118(2).

(4) This Article does not apply in relation to a notice given by the employer or the employee if the notice to be given by the employer to terminate the contract must be at least one week more than the notice required by Article 118(1).

Employments with normal working hours

120.—(1) If an employee has normal working hours under the contract of employment in force during the period of notice and during any part of those normal working hours—

(a) the employee is ready and willing to work but no work is provided for him by his employer,

(b) the employee is incapable of work because of sickness or injury,

(c) the employee is absent from work wholly or partly because of pregnancy or childbirth, or

(d) the employee is absent from work in accordance with the terms of his employment relating to holidays,

the employer is liable to pay the employee for the part of normal 8 working hours covered by any of sub-paragraphs (a), (b), (c) and (d) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a week's pay by the number of normal working hours.

(2) Any payments made to the employee by his employer in respect of the relevant part of the period of notice (whether by way of sick pay, statutory sick pay, maternity pay, statutory maternity pay, holiday pay or otherwise) go towards meeting the employer's liability under this Article.

(3) Where notice was given by the employee, the employer's liability under this Article does not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

Employments without normal working hours

121.—(1) If an employee does not have normal working hours under the contract of employment in force in the period of notice, the employer is liable to pay the employee for each week of the period of notice a sum not less than a week's pay.

(2) The employer's liability under this Article is conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week's pay.

(3) Paragraph (2) does not apply—

(a) in respect of any period during which the employee is incapable of work because of sickness or injury,

(b) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth, or

(c) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays.

(4) Any payment made to an employee by his employer in respect of a period within paragraph (3) (whether by way of sick pay, statutory sick pay, maternity pay, statutory maternity pay, holiday pay or otherwise) shall be taken into account for the purposes of this Article as if it were remuneration paid by the employer in respect of that period.

(5) Where notice was given by the employee, the employer's liability under this Article does not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

Short-term incapacity benefit and industrial injury benefit

122.—(1) This Article has effect where the arrangements in force relating to the employment are such that—

(a) payments by way of sick pay are made by the employer to employees to whom the arrangements apply, in cases where any such employees are incapable of work because of sickness or injury, and

(b) in calculating any payment so made to any such employee an amount representing, or treated as representing, short-term incapacity benefit or industrial injury benefit is taken into account, whether by way of deduction or by way of calculating the payment as a supplement to that amount.

(2) If—

(a) during any part of the period of notice the employee is incapable of work because of sickness or injury,

(b) one or more payments by way of sick pay are made to him by the employer in respect of that part of the period of notice, and

(c) in calculating any such payment such an amount as is referred to in sub-paragraph (b) of paragraph (1) is taken into account as mentioned in that sub-paragraph,

for the purposes of Article 120 or 121 the amount so taken into account shall be treated as having been paid by the employer to the employee by way of sick pay in respect of that part of that period, and shall go towards meeting the liability of the employer under that Article accordingly.

Supplementary

123.—(1) An employer is not liable under Article 120 or 121 to make any payment in respect of a period during which an employee is absent from work with the leave of the employer granted at the request of the employee, including any period of time off taken in accordance with Part VII.

(2) No payment is due under Article 120 or 121 in consequence of a notice to terminate a contract given by an employee if, after the notice is given and on or before the termination of the contract, the employee takes part in a strike of employees of the employer.

(3) If, during the period of notice, the employer breaks the contract of employment, payments received under Article 120 or 121 in respect of the part of the period after the breach go towards mitigating the damages recoverable by the employee for loss of earnings in that part of the period of notice.

(4) If, during the period of notice, the employee breaks the contract and the employer rightfully treats the breach as terminating the contract, no payment is due to the employee under Article 120 or 121 in respect of the part of the period falling after the termination of the contract.

(5) If an employer fails to give the notice required by Article 118, the rights conferred by Articles 119 to 122 and this Article shall be taken into account in assessing his liability for breach of the contract.

(6) Articles 118 to 122 and this Article apply in relation to a contract all or any of the terms of which are terms which take effect by virtue of any statutory provision as in relation to any other contract.

Written statement of reasons for dismissal

Right to written statement of reasons for dismissal

124.—(1) An employee is entitled to be provided by his employer with a written statement giving particulars of the reasons for the employee's dismissal—

(a) if the employee is given by the employer notice of termination of his contract of employment,

(b) if the employee's contract of employment is terminated by the employer without notice, or

(c) if the employee is employed under a contract for a fixed term and that term expires without being renewed under the same contract.

(2) Subject to paragraph (4), an employee is entitled to a written statement under this Article only if he makes a request for one; and a statement shall be provided within fourteen days of such a request.

(3) Subject to paragraph (4), an employee is not entitled to a written statement under this Article unless on the effective date of termination he has been, or will have been, continuously employed for a period of not less than two years ending with that date.

(4) An employee is entitled to a written statement under this Article without having to request it and irrespective of whether she has been continuously employed for any period if she is dismissed—

(a) at any time while she is pregnant, or

(b) after childbirth in circumstances in which her maternity leave period ends by reason of the dismissal.

(5) A written statement under this Article is admissible in evidence in any proceedings.

(6) Subject to paragraph (7), in this Article "the effective date of termination"—

(a) in relation to an employee whose contract of employment is terminated by notice, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

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

(7) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by Article 118 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by paragraph (6)),

the later date is the effective date of termination.

(8) In paragraph (7)(b) "the material date" means—

(a) the date when notice of termination was given by the employer, or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

Complaints to industrial tribunal

125.—(1) A complaint may be presented to an industrial tribunal by an employee on the ground that—

(a) the employer unreasonably failed to provide a written statement under Article 124, or

(b) the particulars of reasons given in purported compliance with that Article are inadequate or untrue.

(2) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal—

(a) may make a declaration as to what it finds the employer's reasons were for dismissing the employee, and

(b) shall make an award that the employer pay to the employee a sum equal to the amount of two weeks' pay.

(3) An industrial tribunal shall not consider a complaint under this Article relating to the reasons for a dismissal unless it is presented to the tribunal at such a time that the tribunal would, in accordance with Article 145, consider a complaint of unfair dismissal in respect of that dismissal presented at the same time.

PART XI

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

The right

The right

126.—(1) An employee has the right not to be unfairly dismissed by his employer.

(2) Paragraph (1) has effect subject to the following provisions of this Part (in particular Articles 140 to 144).

Dismissal

Circumstances in which an employee is dismissed

127.—(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to paragraph (2) and Article 128, only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

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

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

Failure to permit return after childbirth treated as dismissal

128.—(1) Where an employee who—

(a) has the right conferred by Article 111, and

(b) has exercised it in accordance with Article 114,

is not permitted to return to work, she shall (subject to the following provisions of this Article) be taken for the purposes of this Part to be dismissed for the reason for which she was not permitted to return with effect from the notified day of return (being deemed to have been continuously employed until that day).

(2) Paragraph (1) does not apply in relation to an employee if—

(a) immediately before the end of her maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by her

employer, added to the number employed by any associated employer of his, did not exceed five, and

(b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work under Article 111 or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in paragraph (4).

(3) Paragraph (1) does not apply in relation to an employee if—

(a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work under Article 111,

(b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in paragraph (4), and

(c) she accepts or unreasonably refuses that offer.

(4) The conditions referred to in paragraphs (2) and (3) are—

(a) that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and

(b) that the provisions of the contract as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had returned to work under Article 111.

(5) Where on a complaint of unfair dismissal any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (2) or (3), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.

(6) Paragraph (2) shall not apply in relation to the employment of a person by the managers of a voluntary school within the meaning of the Education and Libraries (Northern Ireland) Order 1986.

Effective date of termination

129.—(1) Subject to the following provisions of this Article, in this Part "the effective date of termination"—

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

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

(2) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by Article 118 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Articles 23(3), 140(1) and 153(1) the later date is the effective date of termination.

(3) In paragraph (2)(b) "the material date" means—

(a) the date when notice of termination was given by the employer, or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

(4) Where—

(a) the contract of employment is terminated by the employee,

(b) the material date does not fall during a period of notice given by the employer to terminate that contract, and

(c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by Article 118 to expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Articles 23(3), 140(1) and 153(1) the later date is the effective date of termination.

(5) In paragraph (4) "the material date" means—

(a) the date when notice of termination was given by the employee, or

(b) where no notice was given, the date when the contract of employment was terminated by the employee.

(6) Where an employee is taken to be dismissed for the purposes of this Part by virtue of Article 128, references in this Part to the effective date of termination are to the notified date of return.

Fairness

General

130.—(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this paragraph if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under a statutory provision.

(3) In paragraph (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) —

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

(5) Where the employee is taken to be dismissed for the purposes of this Part by virtue of Article 128, paragraph (4)(a) applies as if for the words "acted reasonably" onwards there were substituted the words "would have been acting reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee if she had not been absent from work, and".

(6) Paragraphs (4) and (5) are subject to Articles 131 to 139 and 144.

Pregnancy and childbirth

131.—(1) 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 she is pregnant or any other reason connected with her pregnancy,

(b) her maternity leave period is ended by the dismissal and the reason (or, if more than one, the principal reason) for the dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child,

(c) her contract of employment is terminated after the end of her maternity leave period and the reason (or, if more than one, the principal reason) for the dismissal is that she took, or availed herself of the benefits of, maternity leave,

(d) the reason (or, if more than one, the principal reason) for the dismissal is a relevant requirement, or a relevant recommendation, as defined by Article 98(2), or

(e) her maternity leave period is ended by the dismissal, the reason (or, if more than one, the principal reason) for the dismissal is that she is redundant and Article 109 has not been complied with.

(2) For the purposes of paragraph (1)(c)—

(a) a woman takes maternity leave if she is absent from work during her maternity leave period, and

(b) a woman avails herself of the benefits of maternity leave if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by Article 103 during that period.

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

(a) before the end of her maternity leave period she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period,

(b) her contract of employment was terminated within the period of four weeks beginning immediately after the end of her maternity leave period in circumstances in which she continued to be incapable of work and the certificate remained current, and

(c) the reason (or, if more than one, the principal reason) for the dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child.

(4) Where—

(a) an employee has the right conferred by Article 111,

(b) it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, and

(c) no offer is made of such alternative employment as is referred to in Article 113,

the dismissal of the employee which is treated as taking place by virtue of Article 128 is to be regarded for the purposes of this Part as unfair.

Health and safety cases

132.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any statutory provision, or

(ii) by reason of being acknowledged as such by the employer,

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of paragraph (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in paragraph (1)(e), he shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have dismissed him for taking (or proposing to take) them.

Trustees of occupational pension schemes

133.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) In this Article "relevant occupational pension scheme" means an occupational pension scheme (as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993) established under a trust.

Employee representatives

134. An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee, being—

(a) an employee representative for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

performed (or proposed to perform) any functions or activities as such an employee representative or candidate.

Assertion of statutory right

135.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of paragraph (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed;

but, for that paragraph to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for paragraph (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) The following are relevant statutory rights for the purposes of this Article—

(a) any right conferred by this Order for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal,

(b) the right conferred by Article 118 of this Order, and

(c) the rights conferred by Articles 35 and 60 of the Trade Union and Labour Relations Order (deductions from pay).

Trade union membership or activities

136.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for his dismissal is that the employee—

(a) was, or proposed to become, a member of an independent trade union, or

(b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or

(c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

(2) In paragraph (1)(b) "an appropriate time" means—

(a) a time outside the employee's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union;

and for this purpose "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) Where the reason, or one of the reasons, for the dismissal was —

(a) the employee's refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments, or

(b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in sub-paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

the reason shall be treated as falling within paragraph (1)(c).

(4) References in this Article to being or becoming a member of a trade union include references to being or becoming a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

Redundancy

137.—(1) 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 was redundant,

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

(c) it is shown that any of paragraphs (2) to (7) applies.

(2) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in any of sub-paragraphs (a) to (d) of paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article (and any requirements of the sub-paragraph, or paragraph, not relating to the reason are satisfied).

(3) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article).

(4) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 133(1).

(5) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 134.

(6) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article).

(7) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 136(1) (read with paragraph (3) of that Article).

(8) In this Part "redundancy case" means a case where sub-paragraphs (a) and (b) of paragraph (1) of this Article are satisfied.

Replacements

138.—(1) Where this Article applies to an employee he shall be regarded for the purposes of Article 130(1)(b) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) This Article applies to an employee where—

(a) on engaging him the employer informs him in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth, and

(b) the employer dismisses him in order to make it possible to give work to the other employee.

(3) This Article also applies to an employee where—

(a) on engaging him the employer informs him in writing that his employment will be terminated on the end of a suspension of another employee from work on medical grounds or maternity grounds (within the meaning of Part VIII), and

(b) the employer dismisses him in order to make it possible to allow the resumption of work by the other employee.

(4) Paragraph (1) does not affect the operation of Article 130(4) in a case to which this Article applies.

Pressure on employer to dismiss unfairly

139.—(1) This Article applies where there falls to be determined for the purposes of this Part a question—

(a) as to the reason, or principal reason, for which an employee was dismissed,

(b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of Article 130(1)(b), or

(c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing him.

(2) In determining the question no account shall be taken of any pressure which by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee; and the question shall be determined as if no such pressure had been exercised.

Exclusion of right

Qualifying period of employment

140.—(1) Article 126 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in Article 96(2), paragraph (1) has effect in relation to that dismissal as if for the words "two years" there were substituted the words "one month".

(3) Paragraph (1) does not apply if—

(a) Article 116 or 128(1) applies,

(b) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,

(c) paragraph (1) of Article 132 (read with paragraphs (2) and

(3) of that Article) applies,

(d) Article 133 applies,

(e) Article 134 applies,

(f) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies,

(g) Article 136 applies, or

(h) Article 137 applies.

Upper age limit

141.—(1) Article 126 does not apply to the dismissal of an employee if on or before the effective date of termination he has attained—

(a) in a case where—

(i) in the undertaking in which the employee was employed there was a normal retiring age for an employee holding the position held by the employee, and

(ii) the age was the same whether the employee holding that position was a man or a woman,

that normal retiring age, and

(b) in any other case, the age of sixty-five.

(2) Paragraph (1) does not apply if—

(a) Article 116 or 128(1) applies,

(b) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,

(c) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,

(d) Article 133 applies,

(e) Article 134 applies,

(f) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies,

(g) Article 136 applies, or

(h) Article 137 applies.

Dismissal procedures agreements

142.—(1) Where a dismissal procedures agreement is designated by an order under paragraph (3) which is for the time being in force—

(a) the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under Article 126, and

(b) accordingly, Article 126 does not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.

(2) Paragraph (1) does not apply if—

(a) Article 116 or 128(1) applies,

(b) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies, or

(c) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies.

(3) An order designating a dismissal procedures agreement may be made by the Department, on an application being made to it jointly by all the parties to the agreement, if it is satisfied that—

(a) every trade union which is a party to the agreement is an independent trade union,

(b) the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed,

(c) those procedures are available without discrimination to all employees falling within any description to which the agreement applies,

(d) the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part,

(e) the procedures provided by the agreement include a right to arbitration or adjudication by an independent referee, or by a tribunal or other independent body, in cases where (by reason of an equality of votes or for any other reason) a decision cannot otherwise be reached, and

(f) the provisions of the agreement are such that it can be determined with reasonable certainty whether or not a particular employee is one to whom the agreement applies.

(4) If at any time when an order under paragraph (3) is in force in relation to a dismissal procedures agreement the Department is satisfied, whether on an application made to it by any of the parties to the agreement or otherwise, either—

(a) that it is the desire of all the parties to the agreement that the order should be revoked, or

(b) that the agreement no longer satisfies all the conditions specified in paragraph (3),

the Department shall revoke the order by an order under this paragraph.

(5) The transitional provisions which may be made in an order under paragraph (4) include, in particular, provisions directing—

(a) that an employee—

(i) shall not be excluded from his right under Article 126 where the effective date of termination falls within a transitional period which ends with the date on which the order takes effect and which is specified in the order, and

(ii) shall have an extended time for presenting a complaint under Article 145 in respect of a dismissal where the effective date of termination falls within that period, and

(b) that, where the effective date of termination falls within such a transitional period, an industrial tribunal shall, in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, have regard to such considerations as are specified in the order (in addition to those specified in this Part and Article 12(4) and (5) of the Industrial Tribunals (Northern Ireland) Order 1996).

Dismissal of those taking part in unofficial industrial action

143.—(1) Article 126 does not apply to the dismissal of an employee if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.

(2) Paragraph (1) does not apply if—

(a) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,

(b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,

(c) Article 134 applies,

(d) Article 137(1) and (2) applies,

(e) Article 137(1) and (3) applies, or

(f) Article 137(1) and (5) applies.

(3) A strike or other industrial action is unofficial in relation to an employee unless—

(a) he is a member of a trade union and the action is authorised or endorsed by that union, or

(b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed;

but a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

(4) The provisions of Article 21(2) of the 1992 Order apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.

(5) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal; but where an act is repudiated as mentioned in Article 21A of the 1992 Order, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

(6) In this Article the "time of dismissal" means—

(a) where the employee's contract of employment is terminated by notice, when the notice is given,

(b) where the employee's contract of employment is terminated without notice, when the termination takes effect, and

(c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a "working day" means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

(7) For the purposes of this Article membership of a trade union 7 for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is unofficial in relation to him or another notwithstanding that II he may in fact have ceased to be a member.

Dismissals in connection with other industrial action

144.—(1) This Article applies in relation to an employee who has a right to complain of unfair dismissal (the "complainant") and who claims to have been unfairly dismissed, where at the date of the dismissal—

(a) the employer was conducting or instituting a lock-out, or

(b) the complainant was taking part in a strike or other industrial action.

(2) This Article does not apply if—

(a) paragraph (1) of Article 131 (read with paragraph (2) of that Article) or paragraph (3) of that Article applies,

(b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,

(c) Article 134 applies,

(d) Article 137(1) and (2) applies,

(e) Article 137(1) and (3) applies, or

(f) Article 137(1) and (5) applies.

(3) In a case where this Article applies an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—

(a) that one or more relevant employees of the same employer have not been dismissed, or

(b) that a relevant employee has before the expiry of the period of three months beginning with the date of his dismissal been offered re-engagement and that the complainant has not been offered re-engagement.

(4) For this purpose "relevant employees" means—

(a) in relation to a lock-out, employees who were directly interested in the dispute in contemplation or furtherance of which the lock-out occurred, and

(b) in relation to a strike or other industrial action, those employees at the establishment of the employer at or from which the complainant works who at the date of his dismissal were taking part in the action.

(5) Nothing in Article 143 affects the question who are relevant employees for the purposes of this Article.

(6) An offer of re-engagement means an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

(7) In this Article "date of dismissal" means—

(a) where the employee's contract of employment was terminated by notice, the date on which the employer's notice was given, and

(b) in any other case, the effective date of termination.

(8) Article 145(2) does not apply in relation to a complaint to which this Article applies, but an industrial tribunal shall not consider such a complaint unless it is presented—

(a) before the end of the period of six months beginning with the date of the complainant's dismissal; or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of six months.

(9) Where it is shown that the condition referred to in paragraph (3)(b) is fulfilled the references in Articles 130 to 138 to the reason or principal reason for which the complainant was dismissed shall be read as references to the reason or principal reason he has not been offered re-engagement.

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

Introductory

Complaints to industrial tribunal

145.—(1) A complaint may be presented to an industrial tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to paragraph (3), an industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where a dismissal is with notice, an industrial tribunal shall consider a complaint under this Article if it is presented after the notice is given but before the effective date of termination.

(4) In relation to a complaint which is presented as mentioned in paragraph (3), the provisions of this Order, so far as they relate to unfair dismissal, have effect as if—

(a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,

(b) references to reinstatement included references to the withdrawal of the notice by the employer,

(c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and

(d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

The remedies: orders and compensation

146.—(1) This Article applies where, on a complaint under Article 145, an industrial tribunal finds that the grounds of the complaint are well-founded.

(2) The tribunal shall—

(a) explain to the complainant what orders may be made under Article 147 and in what circumstances they may be made, and

(b) ask him whether he wishes the tribunal to make such an order.

(3) If the complainant expresses such a wish, the tribunal may make an order under Article 147.

(4) If no order is made under Article 147, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with Articles 152 to 162) to be paid by the employer to the employee.

Orders for reinstatement or re-engagement

The orders

147. An order under this Article may be—

(a) an order for reinstatement (in accordance with Article 148),

(b) an order for re-engagement (in accordance with Article 149),

as the tribunal may decide.

Order for reinstatement

148.—(1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

(2) an order for reinstatement the tribunal shall specify—

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,

(b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(c) the date by which the order must be complied with.

(3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(4) In calculating for the purposes of paragraph (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

(5) Where a dismissal is treated as taking place by virtue of Article 128, references in this Article to the date of termination of employment are to the notified date of return.

Order for re-engagement

149.—(1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.

(2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—

(a) the identity of the employer,

(b) the nature of the employment,

(c) the remuneration for the employment,

(d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,

(e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(f) the date by which the order must be complied with.

(3) In calculating for the purposes of paragraph (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

(4) Where a dismissal is treated as taking place by virtue of Article 128, references in this Article to the date of termination of employment are to the notified date of return.

Choice of order and its terms

150.—(1) In exercising its discretion under Article 147 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—

(a) whether the complainant wishes to be reinstated,

(b) whether it is practicable for the employer to comply with an order for reinstatement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.

(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.

(3) In so doing the tribunal shall take into account—

(a) any wish expressed by the complainant as to the nature of the order to be made,

(b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under paragraph (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of paragraph (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

(6) Paragraph (5) does not apply where the employer shows—

(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or

(b) that—

(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and

(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

Enforcement of order and compensation

151.—(1) An industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, if—

(a) an order under Article 147 is made and the complainant is reinstated or re-engaged, but

(b) the terms of the order are not fully complied with.

(2) Subject to Article 158, the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

(3) Subject to paragraphs (1) and (2), if an order under Article 147 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—

(a) an award of compensation for unfair dismissal (calculated in accordance with Articles 152 to 162), and

(b) except where this sub-paragraph does not apply, an additional award of compensation of the appropriate amount,

to be paid by the employer to the employee.

(4) Paragraph (3)(b) does not apply where—

(a) the employer satisfies the tribunal that it was not practicable to comply with the order, or

(b) the reason (or, if more than one, the principal reason)—

(i) in a redundancy case, for selecting the employee for dismissal, or

(ii) otherwise, for the dismissal,

is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1).

(5) In paragraph (3)(b) "the appropriate amount" means—

(a) where the dismissal is of a description referred to in paragraph (6), not less than twenty-six nor more than fifty-two weeks' pay, and

(b) in any other case, not less than thirteen nor more than twenty-six weeks' pay.

(6) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with paragraph (5)(a) are—

(a) a dismissal which is an act of discrimination within the meaning of the Sex Discrimination (Northern Ireland) Order 1976 which is unlawful by virtue of that Order, and

(b) a dismissal which is an act of discrimination within the meaning of the Fair Employment (Northern Ireland) Act 1976 which is unlawful by virtue of Part III of that Act.

(7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of paragraph (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(8) Where in any case an industrial tribunal finds that the complainant has unreasonably prevented an order under Article 147 from being complied with, in making an award of compensation for unfair dismissal (in accordance with Articles 152 to 162) it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

Compensation

General

152.—(1) Where a tribunal makes an award of compensation for unfair dismissal under Article 146(4) or 151(3)(a) the award shall consist of—

(a) a basic award (calculated in accordance with Articles 153 to 156,160 and 161), and

(b) a compensatory award (calculated in accordance with Articles 157, 158, 160 to 162).

(2) Where this paragraph applies, the award shall also include a special award calculated in accordance with Article 159 unless—

(a) the complainant does not request the tribunal to make an order under Article 147, or

(b) the case falls within Article 155.

(3) Paragraph (2) applies where the reason (or, if more than one, the principal reason)—

(a) in a redundancy case, for selecting the employee for dismissal, or

(b) otherwise, for the dismissal,

is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1).

Basic award

153.—(1) Subject to the provisions of this Article, Articles 154 to 156 and Articles 160 and 161, the amount of the basic award shall be calculated by—

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In paragraph (1)(c) "the appropriate amount" means—

(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within sub-paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for a year of employment not within sub-paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under paragraph (1), no account shall be taken under that paragraph of any year of employment earlier than those twenty years.

(4) Where the effective date of termination is after the sixty-fourth anniversary of the day of the employee's birth, the amount arrived at under paragraphs (1) to (3) shall be reduced by the appropriate fraction.

(5) In paragraph (4) "the appropriate fraction" means the fraction of which—

(a) the numerator is the number of whole months reckoned from the sixty-fourth anniversary of the day of the employee's birth in the period beginning with that anniversary and ending with the effective date of termination, and

(b) the denominator is twelve.

(6) Paragraphs (4) and (5) do not apply to a case within Article 128(1).

Basic award: minimum in certain cases

154.—(1) The amount of the basic award (before any reduction under Article 156) shall not be less than £2,770 where the reason (or, if more than one, the principal reason)—

(a) in a redundancy case, for selecting the employee for dismissal, or

(b) otherwise, for the dismissal,

is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1).

(2) The Department may by order increase the sum specified in paragraph (1).

Basic award of two weeks' pay in certain cases

155. The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee—

(a) by virtue of Article 173 is not regarded as dismissed for the purposes of Part XII, or

(b) by virtue of Article 176 is not, or (if he were otherwise entitled) would not be, entitled to a redundancy payment.

Basic award: reductions

156.—(1) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which (if accepted) would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, 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 finding.

(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(3) Paragraph (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1); and in such a case paragraph (2) applies only to so much of the basic award as is payable because of Article 154.

(4) The amount of the basic award shall be reduced or further reduced by the amount of—

(a) any redundancy payment awarded by the tribunal under Part XII in respect of the same dismissal, or

(b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XII or otherwise).

Compensatory award

157.—(1) Subject to the provisions of this Article and Articles 158, 160 and 161, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in paragraph (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to paragraph (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in paragraph (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XII or otherwise), or

(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under Article 156) in respect of the same dismissal.

(4) In ascertaining the loss referred to in paragraph (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) In determining, for the purposes of paragraph (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—

(a) calling, organising, procuring or financing a strike or other industrial action, or

(b) threatening to do so,

was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

(7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XII or otherwise) exceeds the amount of the basic award which would be payable but for Article 156(4), that excess goes to reduce the amount of the compensatory award.

Limit of compensatory award etc.

158.—(1) The amount of—

(a) any compensation awarded to a person under Article 151(1) and (2), or

(b) a compensatory award to a person calculated in accordance with Article 157,

shall not exceed £11,300.

(2) The Department may by order increase the sum specified in paragraph (1).

(3) In the case of compensation awarded to a person under Article 151(1) and (2), the limit imposed by this Article may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under Article 148(2)(a) or Article 149(2)(d).

(4) Where—

(a) a compensatory award is an award under sub-paragraph (a) of paragraph (3) of Article 151, and

(b) an additional award falls to be made under sub-paragraph (b) of that paragraph,

the limit imposed by this Article on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under Article 148(2)(a) or Article 149(2)(d).

(5) The limit imposed by this Article applies to the amount which the industrial tribunal would, apart from this Article, award in respect of the subject matter of the complaint after taking into account—

(a) any payment made by the respondent to the complainant in respect of that matter, and

(b) any reduction in the amount of the award required by any statutory provision or rule of law.

Special award

159.—(1) Subject to the following provisions, the amount of the special award shall be—

(a) one week's pay multiplied by 104, or

(b) £13,775,

whichever is the greater, but shall not exceed £27,500.

(2) Where the award of compensation is made under Article 151(3)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the order under Article 147, the amount of the special award shall be increased to—

(a) one week's pay multiplied by 156, or

(b) £20,600,

whichever is the greater (but subject to the following provisions).

(3) In a case where the amount of the basic award is reduced under Article 153(4), the amount of the special award shall be reduced by the same fraction.

(4) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(5) Where the tribunal finds that the complainant has unreasonably—

(a) prevented an order under Article 147 from being complied with, or

(b) refused an offer by the employer (made otherwise than in compliance with such an order) which, if accepted, would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed,

the tribunal shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.

(6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining for the purposes of paragraph (2) whether it was practicable to comply with an order under Article 147 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.

(7) The Department may by order increase any of the sums specified in paragraphs (1) and (2).

Acts which are both unfair dismissal and discrimination

160.—(1) Where compensation falls to be awarded in respect of any act both under the Sex Discrimination (Northern Ireland) Order 1976 and under the provisions of this Order relating to unfair dismissal, an industrial tribunal shall not award compensation under that Order or this Order in respect of any loss or other matter which is or has been taken into account under the other Order by the tribunal or another industrial tribunal in awarding compensation on the same or another complaint in respect of that act.

(2) Where compensation falls to be awarded in respect of any act both under the Fair Employment (Northern Ireland) Act 1976 and under the provisions of this Order relating to unfair dismissal, an industrial tribunal shall not award compensation under this Order in respect of any loss or other matter which has been taken into account under that Act by the Fair Employment Tribunal for Northern Ireland in awarding compensation on a complaint in respect of that act.

Matters to be disregarded in assessing contributory fault

161.—(1) Where an industrial tribunal makes an award of compensation for unfair dismissal in a case where the dismissal is unfair by virtue of Article 136 or Article 137(1) and (7), the tribunal shall disregard, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, any such conduct or action of the complainant as is specified below.

(2) Conduct or action of the complainant shall be disregarded in so far as ,it constitutes a breach or proposed breach of a requirement—

(a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions,

(b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions, or

(c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.

For the purposes of this paragraph a requirement means a requirement imposed on the complainant by or under an arrangement or contract of employment or other agreement.

(3) Conduct or action of the complainant shall be disregarded in so far as it constitutes a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in Article 136(3)(a) or an objection, or proposed, objection, (however expressed) to the operation of a provision of a kind mentioned in Article 136(3)(b)).

Dismissal of woman at or after end of maternity leave period

162. Where Article 116 applies in relation to an employee, compensation in any unfair dismissal proceedings shall be assessed without regard to the right conferred on the employee by Article 111,

Interim relief

Interim relief pending determination of complaint

163.—(1) An employee who presents a complaint to an industrial tribunal—

(a) that he has been unfairly dismissed by his employer, and

(b) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1), may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) In a case where the employee relies on Article 136(1)(a) or (b) the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—

(a) that on the date of the dismissal the employee was or proposed to become a member of the union, and

(b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(4) An "authorised official" means an official of the trade union authorised by it to act for the purposes of this Article.

(5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this Article and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

(6) For the purposes of paragraph (3) the date of dismissal shall be taken to be—

(a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), the date on which the notice was given, and

(b) in any other case, the effective date of termination.

(7) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application and, where appropriate, the requisite certificate.

(8) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application and of any certificate together with notice of the date, time and place of the hearing.

(9) If a request under Article 169 is made three days, or more before the date of the hearing, the tribunal shall also give to the person to whom the request relates, as soon as reasonably practicable,

a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.

(10) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

Procedure on hearing of application and making of order

164.—(1) This Article applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or, if more than one, the principal reason) for his dismissal is one of those specified in Article 132(1)(a) and (b), 133(1), 134 or 136(1).

(2) The tribunal shall announce its findings and explain to both parties (if present)—

(a) what powers the tribunal may exercise on the application, and

(b) in what circumstances it will exercise them.

(3) The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—

(a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or

(b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(4) For the purposes of paragraph (3)(b) "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.

(5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

(6) If the employer—

(a) states that he is willing to re-engage the employee in another job, and

(b) specifies the terms and conditions on which he is willing to do so,

the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.

(7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.

(8) If the employee is not willing to accept the job on those terms and conditions—

(a) where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and

(b) otherwise, the tribunal shall make no order.

(9) If on the hearing of an application for interim relief the employer—

(a) fails to attend before the tribunal, or

(b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in paragraph (3),

the tribunal shall make an order for the continuation of the employee's contract of employment.

Order for continuation of contract of employment

165.—(1) An order under Article 164 for the continuation of a contract of employment is an order that the contract of employment continue in force—

(a) for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, and

(b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,

from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.

(2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.

(3) Subject to the following provisions, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—

(a) in the case of a payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and

(b) in the case of a payment for any past period, within such time as may be specified in the order.

(4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.

(5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, goes towards discharging the employer's liability in respect of that period under paragraph (2); and, conversely, any payment under that paragraph in respect of a period goes towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

(6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.

(7) For the purposes of this Article, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

Application for variation or revocation of order

166.—(1) At any time between—

(a) the making of an order under Article 164, and

(b) the determination or settlement of the complaint,

the employer or the employee may apply to an industrial tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.

(2) Articles 163 and 164 apply in relation to such an application as in relation to an original application for interim relief except that —

(a) no certificate need be presented to the tribunal under Article 163(3), and

(b) in the case of an application by the employer, Article 163(8) has effect with the substitution of a reference to the employee for the reference to the employer.

Consequence of failure to comply with order

167.—(1) If, on the application of an employee, an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under Article 164(5) or (7), the tribunal shall—

(a) make an order for the continuation of the employee's contract of employment, and

(b) order the employer to pay compensation to the employee.

(2) on under paragraph (1)(b) shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard—

(a) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and

(b) to any loss suffered by the employee in consequence of the non-compliance.

(3) Article 165 applies to an order under paragraph (1)(a) as in relation to an order under Article 164.

(4) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment paragraph (5) or (6) applies.

(5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order—

(a) the tribunal shall determine the amount owed by the employer on the date of the determination, and

(b) if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.

(6) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

CHAPTER III

SUPPLEMENTARY

Death of employer or employee

168.—(1) Where—

(a) an employer has given notice to an employee to terminate his contract of employment, and

(b) before that termination the employee or the employer dies,

this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

(2) Where—

(a) an employee's contract of employment has been terminated,

(b) by virtue of paragraph (2) or (4) of Article 129 a date later than the effective date of termination as defined in paragraph (1) of that Article is to be treated for certain purposes as the effective date of termination, and

(c) the employer or the employee dies before that date,

paragraph (2) or (4) of Article 129 applies as if the notice referred to in that paragraph as required by Article 118 expired on the date of the death.

(3) Where an employee has died, Articles 147 to 150 do not apply; and, accordingly, if the industrial tribunal finds that the grounds of the complaint are well-founded, the case shall be treated as falling within Article 146(4) as a case in which no order is made under Article 147.

(4) Paragraph (3) does not prejudice an order for reinstatement or re-engagement made before the employee's death.

(5) Where an order for reinstatement or re-engagement has been made and the employee dies before the order is complied with—

(a) if the employer has before the death refused to reinstate or re-engage the employee in accordance with the order, paragraphs (3) to (6) of Article 151 apply, and an award shall be made under paragraph (3)(b) of that Article, unless the employer satisfies the tribunal that it was not practicable at the time of the refusal to comply with the order, and

(b) if there has been no such refusal, paragraphs (1) and (2) of that Article apply if the employer fails to comply with any ancillary terms of the order which remain capable of fulfilment after the employee's death as they would apply to such a failure to comply fully with the terms of an order where the employee had been reinstated or re-engaged.

Awards against third parties

169.—(1) If in proceedings before an industrial tribunal on a complaint of unfair dismissal either the employer or the complainant claims—

(a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, and

(b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union or of one of a number of particular trade unions,

the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused after that time; and no such request may be made after the tribunal has made an award of compensation for unfair dismissal or an order under Article 147.

(3) Where a person has been so joined as a party to the proceedings and the tribunal—

(a) makes an award of compensation for unfair dismissal, and

(b) finds that the claim mentioned in paragraph (1) is well-founded,

the tribunal may order that the compensation shall be paid by that person instead of the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable.

PART XII

REDUNDANCY PAYMENTS ETC.

CHAPTER I

RIGHT TO REDUNDANCY PAYMENT

The right

170.—(1) An employer shall pay a redundancy payment to any employee of his if the employee—

(a) is dismissed by the employer by reason of redundancy, or

(b) is eligible for a redundancy payment by reason of being laid off or kept on short-time.

(2) Paragraph (1) has effect subject to the following provisions of this Part (including, in particular, Articles 175 to 179, 184 to 187, 190 to 196 and 199).

CHAPTER II

RIGHT ON DISMISSAL BY REASON OF REDUNDANCY

Dismissal by reason of redundancy

Circumstances in which an employee is dismissed

171.—(1) Subject to the provisions of this Article and Articles 172 and 173, for the purposes of this Part an employee is dismissed by his employer if (and only if)—

(a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),

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

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) Paragraph (1)(c) does not apply if the employee terminates the contract without notice in circumstances in which he is entitled to do so by reason of a lock-out by the employer.

(3) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the obligatory period of notice the employee gives notice in writing to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire.

(4) In this Part the "obligatory period of notice", in relation to notice given by an employer to terminate an employee's contract of employment, means—

(a) the actual period of the notice in a case where the period beginning at the time when the notice is given and ending at the time when it expires is equal to the minimum period which (by virtue of any statutory provision or otherwise) is required to be given by the employer to terminate the contract of employment, and

(b) the period which—

(i) is equal to the minimum period referred to in sub-paragraph (a), and

(ii) ends at the time when the notice expires,

in any other case.

(5) Where in accordance with any statutory provision or rule of law —

(a) an act on the part of an employer, or

(b) an event affecting an employer (including, in the case of an individual, his death),

operates to terminate a contract under which an employee is employed by him, the act or event shall be taken for the purposes of this Part to be a termination of the contract by the employer.

Failure to permit return after childbirth treated as dismissal

172.—(1) Subject to paragraph (2) and Article 173, where an employee who—

(a) has the right conferred by Article 111, and

(b) has exercised it in accordance with Article 114,

is not permitted to return to work, she shall be taken for the purposes of this Part to be dismissed for the reason for which she was not permitted to return with effect from the notified day of return (being deemed to have been continuously employed until that day).

(2) Where in proceedings arising out of a failure to permit an employee to return to work pursuant to the right conferred by Article 111 the employer shows—

(a) that the reason for the failure is that the employee is redundant, and

(b) that the employee was, or (had she continued to be employed by him) would have been, dismissed by reason of redundancy on a day falling after the commencement of her maternity leave period and before the notified day of return,

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

No dismissal in cases of renewal of contract or re-engagement

173.—(1) Where—

(a) an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made before the end of his employment under the previous contract, and

(b) the renewal or re-engagement takes effect either immediately on, or after an interval of not more than four weeks after, the end of that employment,

the employee shall not be regarded for the purposes of this Part as dismissed by his employer by reason of the ending of his employment under the previous contract.

(2) Paragraph (1) does not apply if—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee is employed, and

(ii) the other terms and conditions of his employment,

differ (wholly or in part) from the corresponding provisions of the previous contract, and

(b) during the period specified in paragraph (3)—

(i) the employee (for whatever reason) terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated, or

(ii) the employer, for a reason connected with or arising out of any difference between the renewed or new contract and the previous contract, terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated.

(3) The period referred to in paragraph (2)(b) is the period—

(a) beginning at the end of the employee's employment under the previous contract, and

(b) ending with—

(i) the period of four weeks beginning with the date on which the employee starts work under the renewed or new contract, or

(ii) such longer period as may be agreed in accordance with paragraph (6) for the purpose of retraining the employee for employment under that contract;

and is in this Part referred to as the "trial period".

(4) Where paragraph (2) applies, for the purposes of this Part—

(a) the employee shall be regarded as dismissed on the date on which his employment under the previous contract (or, if there has been more than one trial, period, the original contract) ended, and

(b) the reason for the dismissal shall be taken to be the reason for which the employee was then dismissed, or would have been dismissed had the offer (or original offer) of renewed or new employment not been made, or the reason which resulted in that offer being made.

(5) Paragraph (2) does not apply if the employee's contract of employment is again renewed, or he is again re-engaged under a new contract of employment, in circumstances such that paragraph (1) again applies.

(6) For the purposes of paragraph (3)(b)(ii) a period of retraining is agreed in accordance with this paragraph only if the agreement—

(a) is made between the employer and the employee or his representative before the employee starts work under the contract as renewed, or the new contract,

(b) is in writing,

(c) specifies the date on which the period of retraining ends, and

(d) specifies the terms and conditions of employment which will apply in the employee's case after the end of that period.

Redundancy

174.—(1) For the purposes of this Order an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

(2) For the purposes of paragraph (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in sub-paragraphs (a) and (b) of that paragraph would be satisfied without so treating them).

(3) Where—

(a) the contract under which a person is employed is treated by Article 171(5) as terminated by his employer by reason of an act or event, and

(b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment,

he shall be taken for the purposes of this Order to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in sub-paragraphs (a) and (b) of paragraph (1).

(4) In its application to a case within paragraph (3), sub-paragraph (a)(i) of paragraph (1) has effect as if the reference in that paragraph to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.

(5) In paragraph (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

Exclusions

Summary dismissal

175.—(1) Subject to paragraphs (2) and (3), an employee is not entitled to a redundancy payment by reason of dismissal where his employer, being entitled to terminate his contract of employment without notice by reason of the employee's conduct, terminates it either—

(a) without notice,

(b) by giving shorter notice than that which, in the absence of conduct entitling the employer to terminate the contract without notice, the employer would be required to give to terminate the contract, or

(c) by giving notice which includes, or is accompanied by, a statement in writing that the employer would, by reason of the employee's conduct, be entitled to terminate the contract without notice.

(2) Where an employee who—

(a) has been given notice by his employer to terminate his contract of employment, or

(b) has given notice to his employer under Article 183(1) indicating his intention to claim a redundancy payment in respect of lay-off or short-time,

takes part in a strike at any relevant time in circumstances which entitle the employer to treat the contract of employment as terminable without notice, paragraph (1) does not apply if the employer terminates the contract by reason of his taking part in the strike.

(3) Where the contract of employment of an employee who—

(a) has been given notice by his employer to terminate his contract of employment, or

(b) has given notice to his employer under Article 183(1) indicating his intention to claim a redundancy payment in respect of lay-off or short-time,

is terminated as mentioned in paragraph (1) at any relevant time otherwise than by reason of his taking part in a strike, an industrial tribunal may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal, in the circumstances of the case, to be just and equitable that the employee should receive it.

(4) In paragraph (3) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from paragraph (1), or

(b) such part of that redundancy payment as the tribunal thinks fit.

(5) In this Article "relevant time"—

(a) in the case of an employee who has been given notice by his employer to terminate his contract of employment, means any time within the obligatory period of notice, and

(b) in the case of an employee who has given notice to his employer under Article 183(1), means any time after the service of the notice.

Renewal of contract or re-engagement

176.—(1) This Article applies where an offer (whether in writing or not) is made to an employee before the end of his employment—

(a) to renew his contract of employment, or

(b) to re-engage him under a new contract of employment,

with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.

(2) Where paragraph (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.

(3) This paragraph is satisfied where—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee would be employed, and

(ii) the other terms and conditions of his employment,

would not differ from the corresponding provisions of the previous contract, or

(b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.

(4) The employee is not entitled to a redundancy payment if—

(a) his contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of the offer,

(b) the provisions of the contract as renewed or new contract as to the capacity or place in which he is employed or the other terms and conditions of his employment differ (wholly or in part) from the corresponding provisions of the previous contract.

(c) the employment is suitable in relation to him, and

(d) during the trial period he unreasonably terminates the contract, or unreasonably gives notice to terminate it and it is in consequence terminated.

Employee anticipating expiry of employer's notice

177.—(1) Subject to paragraph (3), an employee is not entitled to a redundancy payment where—

(a) he is taken to be dismissed by virtue of Article 171(3) by reason of giving to his employer notice terminating his contract of employment on a date earlier than the date on which notice by the employer terminating the contract is due to expire,

(b) before the employee's notice is due to expire, the employer gives him a notice such as is specified in paragraph (2), and

(c) the employee does not comply with the requirements of that notice.

(2) The employer's notice referred to in paragraph (1)(b) is a notice in writing—

(a) requiring the employee to withdraw his notice terminating the contract of employment and to continue in employment until the date on which the employer's notice terminating the contract expires, and

(b) stating that, unless he does so, the employer will contest any liability to pay to him a redundancy payment in respect of the termination of his contract of employment.

(3) An industrial tribunal may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal, having regard to—

(a) the reasons for which the employee seeks to leave the employment, and

(b) the reasons for which the employer requires him to continue in it,

to be just and equitable that the employee should receive the payment.

(4) In paragraph (3) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from paragraph (1), or

(b) such part of that redundancy payment as the tribunal thinks fit.

Strike during currency of employer's notice

178.—(1) This Article applies where—

(a) an employer has given notice to an employee to terminate his contract of employment ("notice of termination"),

(b) after the notice is given the employee begins to take part in a strike of employees of the employer, and

(c) the employer serves on the employee a notice of extension.

(2) A notice of extension is a notice in writing which—

(a) requests the employee to agree to extend the contract of employment beyond the time of expiry by a period comprising as many available days as the number of working days lost by striking ("the proposed period of extension"),

(b) indicates the reasons for which the employer makes that request, and

(c) states that the employer will contest any liability to pay the employee a redundancy payment in respect of the dismissal effected by the notice of termination unless either—

(i) the employee complies with the request, or

(ii) the employer is satisfied that, in consequence of sickness or injury or otherwise, the employee is unable to comply with it or that (even though he is able to comply with it) it is reasonable in the circumstances for him not to do so.

(3) Subject to paragraphs (4) and (5), if the employee does not comply with the request contained in the notice of extension, he is not entitled to a redundancy payment by reason of the dismissal effected by the notice of termination.

(4) Paragraph (3) does not apply if the employer agrees to pay a redundancy payment to the employee in respect of the dismissal effected by the notice of termination even though he has not complied with the request contained in the notice of extension.

(5) An industrial tribunal may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal that—

(a) the employee has not complied with the request contained in the notice of extension and the employer has not agreed to pay a redundancy payment in respect of the dismissal effected by the notice of termination, but

(b) either the employee was unable to comply with the request by it was reasonable in the circumstances for him not to comply with it.

(6) In paragraph (5) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from paragraph (3), or

(b) such part of that redundancy payment as the tribunal thinks fit.

(7) If the employee—

(a) complies with the request contained in the notice of extension, or

(b) does not comply with it but attends at his proper or usual place of work and is ready and willing to work on one or more (but not all) of the available days within the proposed period of extension,

the notice of termination has effect, and shall be deemed at all material times to have had effect, as if the period specified in it had been appropriately extended; and Articles 119 to 123 accordingly apply as if the period of notice required by Article 118 were extended to a corresponding extent.

(8) In paragraph (7) "appropriately extended" means—

(a) in a case within sub-paragraph (a) of that paragraph, extended beyond the time of expiry by an additional period equal to the proposed period of extension, and

(b) in a case within sub-paragraph (b) of that paragraph, extended beyond the time of expiry up to the end of the day (or last of the days) on which he attends at his proper or usual place of work and is ready and willing to work.

Provisions supplementary to Article 178

179.—(1) For the purposes of Article 178 an employee complies with the request contained in a notice of extension if, but only if, on each available day within the proposed period of extension, he—

(a) attends at his proper or usual place of work, and

(b) is ready and willing to work,

whether or not he has signified his agreement to the request in any other way.

(2) The reference in Article 178(2) to the number of working days lost by striking is a reference to the number of working days in the period—

(a) beginning with the date of service of the notice of termination, and

(b) ending with the time of expiry,

which are days on which the employee in question takes part in a strike of employees of his employer.

(3) In Article 178 and this Article—

"available day", in relation to an employee, means a working day beginning at or after the time of expiry which is a day on which he is not taking part in a strike of employees of the employer,

"available day within the proposed period of extension" means an available day which begins before the end of the proposed period of extension,

"time of expiry", in relation to a notice of termination, means the time at which the notice would expire apart from Article 178, and

"working day", in relation to an employee, means a day on which, in accordance with his contract of employment, he is normally required to work.

(4) Neither the service of a notice of extension nor any extension by virtue of Article 178(7) of the period specified in a notice of termination affects—

(a) any right either of the employer or of the employee to terminate the contract of employment (whether before, at or after the time of expiry) by a further notice or without notice, or

(b) the operation of this Part in relation to any such termination of the contract of employment.

Supplementary

The relevant date

180.—(1) For the purposes of the provisions of this Order relating to redundancy payments "the relevant date" in relation to the dismissal of an employee has the meaning given by this Article.

(2) Subject to the following provisions of this Article, "the relevant date"—

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

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

(3) Where the employee is taken to be dismissed by virtue of Article 171(3) the "relevant date" means the date on which the employee's notice to terminate his contract of employment expires.

(4) Where the employee is regarded by virtue of Article 173(4) as having been dismissed on the date on which his employment under an earlier contract ended, "the relevant date" means—

(a) for the purposes of Article 199(1), the date which is the relevant date as defined by paragraph (2) in relation to the renewed or new contract or, where there has been more than one trial period, the last such contract, and

(b) for the purposes of any other provision, the date which is the relevant date as defined by paragraph (2) in relation to the previous contract or, where there has been more than one such trial period, the original contract.

(5) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by Article 118 to be given by an employer would, if duly given on the material date, expire on a date later than the relevant date (as defined by the previous provisions of this Article),

for the purposes of Articles 23(3), 190 and 197(1) the later date is the relevant date.

(6) In paragraph (5)(b) "the material date" means—

(a) the date when notice of termination was given by the employer, or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

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

Provisions supplementing Articles 173 and 176

181.—(1) In Articles 173 and 176—

(a) references to re-engagement are to re-engagement by the employer or an associated employer, and

(b) references to an offer are to an offer made by the employer or an associated employer.

(2) For the purposes of the application of Article 173(1) or 176(1) to a contract under which the employment ends on a Friday, Saturday or Sunday—

(a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous contract if it takes effect on or before the next Monday after that Friday, Saturday or Sunday, and

(b) the interval of four weeks to which those provisions refer shall be calculated as if the employment had ended on that next Monday.

(3) Where Article 173 or 176 applies in a case within Article 172(1)—

(a) references to a renewal or re-engagement taking effect immediately on, or after an interval of not more than four weeks after, the end of the employment are to a renewal or re-engagement taking effect on, or after an interval of not more than four weeks after, the notified day of return, and

(b) references to provisions of the previous contract are to the provisions of the contract under which the employee worked immediately before the beginning of her maternity leave period.

CHAPTER III

RIGHT BY REASON OF LAY-OFF OR SHORT-TIME

Lay-off and short-time

Meaning of "lay-off" and "short-time"

182.—(1) For the purposes of this Part an employee shall be taken to be laid off for a week if—

(a) he is employed under a contract on terms and conditions such that his remuneration under the contract depends on his being provided by the employer with work of the kind which he is employed to do, but

(b) he is not entitled to any remuneration under the contract in respect of the week because the employer does not provide such work for him.

(2) For the purposes of this Part an employee shall be taken to be kept on short-time for a week if by reason of a diminution in the work provided for the employee by his employer (being work of a kind which under his contract the employee is employed to do) the employee's remuneration for the week is less than half a week's pay.

Eligibility by reason of lay-off or short-time

183.—(1) Subject to the following provisions of this Part, for the purposes of this Part an employee is eligible for a redundancy payment by reason of being laid off or kept on short-time if—

(a) he gives notice in writing to his employer indicating (in whatever terms) his intention to claim a redundancy payment in respect of lay-off or short-time (referred to in this Part as "notice of intention to claim"), and —

(b) before the service of the notice he has been laid off or kept on short-time in circumstances in which paragraph (2) applies.

(2) This paragraph applies if the employee has been laid off or kept on short-time—

(a) for four or more consecutive weeks of which the last before the service of the notice ended on, or not more than four weeks before, the date of service of the notice, or

(b) for a series of six or more weeks (of which not more than three were consecutive) within a period of thirteen weeks, where the last week of the series before the service of the notice ended on, or not more than four weeks before, the date of service of the notice.

Exclusions

Counter-notices

184. Where an employee gives to his employer notice of intention to claim but—

(a) the employer gives to the employee, within seven days after the service of that notice, notice in writing (referred to in this Part as a "counter-notice") that he will contest any liability to pay to the employee a redundancy payment in pursuance of the employee's notice, and

(b) the employer does not withdraw the counter-notice by a subsequent notice in writing,

the employee is not entitled to a redundancy payment in pursuance of his notice of intention to claim except in accordance with a decision of an industrial tribunal.

Resignation

185.—(1) An employee is not entitled to a redundancy payment by reason of being laid off or kept on short-time unless he terminates his contract of employment by giving such period of notice as is required for the purposes of this Article before the end of the relevant period.

(2) The period of notice required for the purposes of this Article—

(a) where the employee is required by his contract of employment to give more than one week's notice to terminate the contract, is the minimum period which he is required to give, and

(b) otherwise, is one week.

(3) In paragraph (1) "the relevant period"—

(a) if the employer does not give a counter-notice within seven days after the service of the notice of intention to claim, is three weeks after the end of those seven days,

(b) if the employer gives a counter-notice within that period of seven days but withdraws it by a subsequent notice in writing, is three weeks after the service of the notice of withdrawal, and

(c) if—

(i) the employer gives a counter-notice within that period of seven days, and does not so withdraw it, and

(ii) a question as to the right of the employee to a redundancy payment in pursuance of the notice of intention to claim is referred to an industrial tribunal,

is three weeks after the tribunal has notified to the employee its decision on that reference.

(4) For the purposes of paragraph (3)(c) no account shall be taken o f —

(a) any appeal against the decision of the tribunal, or

(b) any proceedings or decision in consequence of any such appeal.

Dismissal

186.—(1) An employee is not entitled to a redundancy payment by reason of being laid off or kept on short-time if he is dismissed by his employer.

(2) Paragraph (1) does not prejudice any right of the employee to a redundancy payment in respect of the dismissal.

Likelihood of full employment

187.—(1) An employee is not entitled to a redundancy payment in pursuance of a notice of intention to claim if—

(a) on the date of service of the notice it was reasonably to be expected that the employee (if he continued to be employed by the same employer) would, not later than four weeks after that date, enter on a period of employment of not less than thirteen weeks during which he would not be laid off or kept on short-time for any week, and

(b) the employer gives a counter-notice to the employee within seven days after the service of the notice of intention to claim.

(2) Paragraph (1) does not apply where the employee—

(a) continues or has continued, during the next four weeks after the date of service of the notice of intention to claim, to be employed by the same employer, and

(b) is or has been laid off or kept on short-time for each of those weeks.

Supplementary

The relevant date

188.—(1) For the purposes of the provisions of this Order relating to redundancy payments "the relevant date" in relation to a notice of intention to claim or a right to a redundancy payment in pursuance of such a notice—

(a) in a case falling within sub-paragraph (a) of paragraph (2) of Article 183, means the date on which the last of the four or

(b) more consecutive weeks before the service of the notice came to an end, and in a case falling within sub-paragraph (b) of that paragraph, means the date on which the last of the series of six or more weeks before the service of the notice came to an end.

Provisions supplementing Articles 183 and 187

189. For the purposes of Articles 183(2) and 187(2)—

(a) it is immaterial whether a series of weeks consists wholly of weeks for which the employee is laid off or wholly of weeks for which he is kept on short-time or partly of the one and partly of the other, and

(b) no account shall be taken of any week for which an employee is laid off or kept on short-time where the lay-off or short-time is wholly or mainly attributable to a strike or a lock-out (whether or not in the trade or industry in which the employee is employed and whether in Northern Ireland or elsewhere).

CHAPTER IV

GENERAL EXCLUSIONS FROM RIGHT

Qualifying period of employment

190. An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.

Upper age limit

191.—(1) An employee does not have any right to a redundancy payment if before the relevant date he has attained—

(a) in a case where—

(i) in the business for the purposes of which the employee was employed there was a normal retiring age of less than sixty-five for an employee holding the position held by the employee, and

(ii) the age was the same whether the employee holding that position was a man or woman,

that normal retiring age, and

(b) in any other case, the age of sixty-five.

(2) Paragraph (1) does not apply to a case within Article 172(1).

Exemption orders

192.—(1) Where an order under this Article is in force in respect of an agreement covered by this Article, an employee who, immediately before the relevant date, is an employee to whom the agreement applies does not have any right to a redundancy payment.

(2) An agreement is covered by this Article if it is an agreement between—

(a) one or more employers or organisations of employers, and

(b) one or more trade unions representing employees,

under which employees to whom the agreement applies have a right in certain circumstances to payments on the termination of their contracts of employment.

(3) Where, on the application of all the parties to an agreement covered by this Article, the Department is satisfied, having regard to the provisions of the agreement, that the employees to whom the agreement applies should not have any right to a redundancy payment, it may make an order under this Article in respect of the agreement.

(4) The Department shall not make an order under this Article in respect of an agreement unless the agreement indicates (in whatever terms) the willingness of the parties to it to submit to an industrial tribunal any question arising under the agreement as to—

(a) the right of an employee to a payment on the termination of his employment, or

(b) the amount of such a payment.

(5) An order revoking an earlier order under this Article may be made in pursuance of an application by all or any of the parties to the agreement in question or in the absence of such an application.

(6) Paragraph (1) does not apply to a case within Article 172(1).

Pension rights

193.—(1) The Department shall by regulations make provision for excluding the right to a redundancy payment, or reducing the amount of any redundancy payment, in such cases to which paragraph (2) applies as are prescribed by the regulations.

(2) This paragraph applies to cases in which an employee has (whether by virtue of any statutory provision or otherwise) a right or claim (whether or not legally enforceable) to a periodical payment or lump sum by way of pension, gratuity or superannuation allowance which—

(a) is to be paid by reference to his employment by a particular employer, and

(b) is to be paid, or to begin to be paid, at the time when he leaves the employment or within such period after he leaves the employment as may be prescribed by the regulations.

(3) The regulations shall secure that the right to a redundancy payment shall not be excluded, and that the amount of a redundancy payment shall not be reduced, by reason of any right or claim to a periodical payment or lump sum, in so far as the payment or lump sum —

(a) represents compensation for loss of employment or for loss or diminution of emoluments or of pension rights, and

(b) is payable under a statutory provision.

(4) In relation to any case where (in accordance with any provision of this Part) an industrial tribunal determines that an employer is liable to pay part (but not the whole) of a redundancy payment the references in this Article to a redundancy payment, or to the amount of a redundancy payment, are to the part of the redundancy payment, or to the amount of the part.

Public offices etc.

194. A person does not have any right to a redundancy payment in respect of any employment which—

(a) is employment in a public office within the meaning of section 39 of the Superannuation Act 1965 or section 39 of the Superannuation (Northern Ireland) Act 1967, or

(b) is treated for the purposes of pensions and other superannuation benefits as service in the civil service of Northern Ireland or the civil service of the United Kingdom.

Overseas government employment

195.—(1) A person does not have any right to a redundancy payment in respect of employment in any capacity under the Government of an overseas territory.

(2) The reference in paragraph (1) to the Government of an overseas territory includes a reference to—

(a) a Government constituted for two or more overseas territories, and

(b) any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more overseas territories.

(3) In this Article references to an overseas territory are to any territory or country outside the United Kingdom.

Domestic servants

196.—(1) A person does not have any right to a redundancy payment in respect of employment as a domestic servant in a private household where the employer is the parent (or step-parent), grandparent, child (or step-child), grandchild or brother or sister (or half-brother or half-sister) of the employee.

(2) Subject to that, the provisions of this Part apply to an employee who is employed as a domestic servant in a private household as if—

(a) the household were a business, and

(b) the maintenance of the household were the carrying on of that business by the employer.

CHAPTER V

OTHER PROVISIONS ABOUT REDUNDANCY PAYMENTS

Amount of a redundancy payment

197.—(1) The amount of a redundancy payment shall be calculated by—

(a) determining the period, ending with the relevant date, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In paragraph (1)(c) "the appropriate amount" means—

(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within sub-paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for each year of employment not within sub-paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under paragraph (1), no account shall be taken under that paragraph of any year of employment earlier than those twenty years.

(4) Where the relevant date is after the sixty-fourth anniversary of the day of the employee's birth, the amount arrived at under paragraphs (1) to (3) shall be reduced by the appropriate fraction.

(5) In paragraph (4) "the appropriate fraction" means the fraction of which—

(a) the numerator is the number of whole months reckoned from the sixty-fourth anniversary of the day of the employee's birth in the period beginning with that anniversary and ending with the relevant date, and

(b) the denominator is twelve.

(6) Paragraphs (1) to (5) apply for the purposes of any provision of this Part by virtue of which an industrial tribunal may determine that an employer is liable to pay to an employee—

(a) the whole of the redundancy payment to which the employee would have had a right apart from some other provision, or

(b) such part of the redundancy payment to which the employee would have had a right apart from some other provision as the tribunal thinks fit,

as if any reference to the amount of a redundancy payment were to the amount of the redundancy payment to which the employee would have been entitled apart from that other provision.

(7) Paragraphs (4) and (5) do not apply to a case within Article 172(1).

(8) This Article has effect subject to any regulations under Article 193 by virtue of which the amount of a redundancy payment, or part of a redundancy payment, may be reduced.

References to industrial tribunals

198.—(1) Any question arising under this Part as to—

(a) the right of an employee to a redundancy payment, or

(b) the amount of a redundancy payment,

shall be referred to and determined by an industrial tribunal.

(2) For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.

(3) Any question whether an employee will become entitled to a redundancy payment if he is not dismissed by his employer and he terminates his contract of employment as mentioned in Article 185(1) shall for the purposes of this Part be taken to be a question as to the right of the employee to a redundancy payment.

(4) Where an order under Article 192 is in force in respect of an agreement, this Article has effect in relation to any question arising under the agreement as to the right of an employee to a payment on the termination of his employment, or as to the amount of such a payment, as if the payment were a redundancy payment and the question arose under this Part.

Claims for redundancy payment

199.—(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—

(a) the payment has been agreed and paid,

(b) the employee has made a claim for the payment by notice in writing given to the employer,

(c) a question as to the employee's right to, or the amount of, the payment has been referred to an industrial tribunal, or

(d) a complaint relating to his dismissal has been presented by the employee under Article 145.

(2) An employee is not deprived of his right to a redundancy payment by paragraph (1) if, during the period of six months immediately following the period mentioned in that paragraph, the employee—

(a) makes a claim for the payment by notice in writing given to the employer,

(b) refers to an industrial tribunal a question as to his right to, or the amount of, the payment, or

(c) presents a complaint relating to his dismissal under Article 145,

and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

(3) In determining under paragraph (2) whether it is just and equitable that an employee should receive a redundancy payment an industrial tribunal shall have regard to—

(a) the reason shown by the employee for his failure to take any such step as is referred to in paragraph (2) within the period mentioned in paragraph (1), and

(b) all the other relevant circumstances.

Written particulars of redundancy payment

200.—(1) On making any redundancy payment, otherwise than in pursuance of a decision of a tribunal which specifies the amount of the payment to be made, the employer shall give to the employee a written statement indicating how the amount of the payment has been calculated.

(2) An employer who without reasonable excuse fails to comply with paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(3) If an employer fails to comply with the requirements of paragraph (1), the employee may by notice in writing to the employer require him to give to the employee a written statement complying with those requirements within such period (not being less than one week beginning with the day on which the notice is given) as may be specified in the notice.

(4) An employer who without reasonable excuse fails to comply with a notice under paragraph (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. CHAPTER VI

CHAPTER VI

PAYMENTS BY DEPARTMENT

Applications for payments

201.—(1) Where an employee claims that his employer is liable to pay to him an employer's payment and either—

(a) that the employee has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or

(b) that the employer is insolvent and the whole or part of the payment remains unpaid,

the employee may apply to the Department for a payment under this Article.

(2) In this Part "employer's payment", in relation to an employee, means—

(a) a redundancy payment which his employer is liable to pay to him under this Part, or

(b) a payment which his employer is, under an agreement in respect of which an order is in force under Article 192, liable to make to him on the termination of his contract of employment.

(3) In relation to any case where (in accordance with any provision of this Part) an industrial tribunal determines that an employer is liable to pay part (but not the whole) of a redundancy payment the reference in paragraph (2)(a) to a redundancy payment is to the part of the redundancy payment.

(4) In paragraph (1)(a) "legal proceedings"—

(a) does not include any proceedings before an industrial tribunal, but

(b) includes any proceedings to enforce a decision or award of an industrial tribunal.

(5) An employer is insolvent for the purposes of paragraph (1)(b)—

(a) where the employer is an individual, if (but only if) paragraph (6) is satisfied, and

(b) where the employer is a company, if (but only if) paragraph (7) is satisfied.

(6) This paragraph is satisfied in the case of an employer who is an individual if—

(a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors, or

(b) he has died and his estate falls to be administered in accordance with an order under Article 365 of the Insolvency (Northern Ireland) Order 1989.

(7) This paragraph is satisfied in the case of an employer which is a company—

(a) if a winding up order or an administration order has been made, or a resolution for voluntary winding up has been passed, with respect to the company,

(b) if a receiver or a manager of the company's undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or

(c) if a voluntary arrangement proposed in the case of the company for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 has been approved under that Part.

Making of payments

202.—(1) Where, on an application under Article 201 by an employee in relation to an employer's payment, the Department is satisfied that the requirements specified in paragraph (2) are met, it shall pay to the employee out of the Northern Ireland National Insurance Fund a sum calculated in accordance with Article 203 but reduced by so much (if any) of the employer's payment as has already been paid.

(2) The requirements referred to in paragraph (1) are—

(a) that the employee is entitled to the employer's payment, and

(b) that one of the conditions specified in sub-paragraphs (a) and (b) of paragraph (1) of Article 201 is fulfilled,

and, in a case where the employer's payment is a payment such as is mentioned in paragraph (2)(b) of that section, that the employee's right to the payment arises by virtue of a period of continuous employment (computed in accordance with the provisions of the agreement in question) which is not less than two years.

(3) Where under this Article the Department pays a sum to an employee in respect of an employer's payment—

(a) all rights and remedies of the employee with respect to the employer's payment, or (if the Department has paid only part of it) all the rights and remedies of the employee

with respect to that part of the employer's payment, are transferred to and vest in the Department, and

(b) any decision of an industrial tribunal requiring the employer's payment to be paid to the employee has effect as if it required that payment, or that part of it which the Department has paid, to be paid to the Department.

(4) Any money recovered by the Department by virtue of paragraph (3) shall be paid into the Northern Ireland National Insurance Fund.

Amount of payments

203.—(1) The sum payable to an employee by the Department under Article 202—

(a) where the employer's payment to which the employee's application under Article 201 relates is a redundancy payment or a part of a redundancy payment, is a sum equal to the amount of the redundancy payment or part, and

(b) where the employer's payment to which the employee's application under Article 201 relates is a payment which the employer is liable to make under an agreement in respect of which an order is in force under Article 192, is a sum equal to the amount of the employer's payment or of the relevant redundancy payment, whichever is less.

(2) The reference in paragraph (1)(b) to the amount of the relevant redundancy payment is to the amount of the redundancy payment which the employer would have been liable to pay to the employee on the assumptions specified in paragraph (3).

(3) The assumptions referred to in paragraph (2) are that—

(a) the order in force in respect of the agreement had not been made,

(b) the circumstances in which the employer's payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in those circumstances,

(c) the relevant date, in relation to any such redundancy payment, had been the date on which the termination of the employee's contract of employment is treated as having taken effect for the purposes of the agreement, and

(d) in so far as the provisions of the agreement relating to the circumstances in which the continuity of an employee's period of employment is to be treated as broken, and the weeks which are to count in computing a period of employment, are inconsistent with the provisions of Chapter III of Part I, the provisions of the agreement were substituted for those provisions.

Information relating to applications for payments

204.—(1) Where an employee makes an application to the Department under Article 201, the Department may, by notice in writing given to the employer, require the employer—

(a) to provide the Department with such information, and

(b) to produce for examination on behalf of the Department documents in his custody or under his control of such description,

as the Department may reasonably require for the purpose of determining whether the application is well-founded.

(2) Where a person on whom a notice is served under paragraph (1) fails without reasonable excuse to comply with a requirement imposed by the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person is guilty of an offence if—

(a) in providing any information required by a notice under paragraph (1), he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or

(b) he produces for examination in accordance with a notice under paragraph (1) a document which to his knowledge has been wilfully falsified.

(4) A person guilty of an offence under paragraph (3) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

References to industrial tribunals

205.—(1) Where on an application made to the Department for a payment under Article 201 it is claimed that an employer is liable to pay an employer's payment, there shall be referred to an industrial tribunal—

(a) any question as to the liability of the employer to pay the employer's payment, and

(b) any question as to the amount of the sum payable in accordance with Article 203.

(2) For the purposes of any reference under this Article an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.

CHAPTER VII

SUPPLEMENTARY

Application of Part to particular cases

Employment not under contract of employment

206.—(1) The Department may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part and the provisions of this Order supplementary to this Part have effect in relation to any employment of a description to which this Article applies as may be so prescribed as if —

(a) it were employment under a contract of employment,

(b) any person engaged in employment of that description were an employee, and

(c) such person as may be determined by or under the regulations were his employer.

(2) This Article applies to employment of any description which—

(a) is employment in the case of which secondary Class 1 contributions are payable under Part I of the Social Security Contributions and Benefits Act (Northern Ireland) 1992 in respect of persons engaged in it, but

(b) is not employment under a contract of service or of apprenticeship or employment of any description mentioned in Article 194 (whether as originally enacted or as modified by an order under Article 250(1)).

Termination of employment by statute

207.—(1) The Department may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part has effect in relation to any person who by virtue of any statutory provisions—

(a) is transferred to, and becomes a member of, a body specified in those provisions, but

(b) at a time so specified ceases to be a member of that body unless before that time certain conditions so specified have been fulfilled,

as if the cessation of his membership of that body by virtue of those provisions were dismissal by his employer by reason of redundancy.

(2) The power conferred by paragraph (1) is exercisable whether or not membership of the body in question constitutes employment within the meaning of Article 3(5); and, where that membership does not constitute such employment, that power may be exercised in addition to any power exercisable under Article 206.

Employees paid by person other than employer

208.—(1) For the purposes of the operation of the provisions of this Part (and Chapter III of Part I) in relation to any employee whose remuneration is, by virtue of any statutory provision, payable to him by a person other than his employer, each of the references to the employer specified in paragraph (2) shall be construed as a reference to the person by whom the remuneration is payable.

(2) The references referred to in paragraph (1) are the first reference in Article 170(1), the third reference in Article 175(3), the first reference in Article 177(3) and the first reference in Article 178(2)(c) and the references in Articles 10(5), 177(2)(b), 178(4) and (5), 184(a) and (b), 185(3), 187(1)(b), 193(4), 197(6), 199 to 204 and 205(1).

Death of employer or employee

Death of employer: dismissal

209.—(1) Where the contract of employment of an employee is taken for the purposes of this Part to be terminated by his employer by reason of the employer's death, this Part has effect in accordance with the following provisions of this Article.

(2) Article 173 applies as if—

(a) in paragraph (1)(a), for the words "in pursuance" onwards there were substituted "by a personal representative of the deceased employer",

(b) in paragraph (1)(b), for the words "either immediately" onwards there were substituted "not later than eight weeks after the death of the deceased employer", and

(c) in paragraphs (2)(b) and (6)(a), for the word "employer" there were substituted "personal representative of the deceased employer".

(3) Article 176(1) applies as if—

(a) for the words "before the end of his employment" there were substituted "by a personal representative of the deceased employer", and

(b) for the words "either immediately" onwards there were substituted "not later than eight weeks after the death of the deceased employer".

(4) For the purposes of Article 176—

(a) provisions of the contract as renewed, or of the new contract, do not differ from the corresponding provisions of the contract in force immediately before the death of the

deceased employer by reason only that the personal representative would be substituted for the deceased employer as the employer, and

(b) no account shall be taken of that substitution in determining whether refusal of the offer was unreasonable or whether the employee acted reasonably in terminating or giving notice to terminate the new or renewed employment.

(5) Article 181 has effect as if—

(a) paragraph (1) were omitted, and

(b) in paragraph (2), sub-paragraph (a) were omitted and, in sub-paragraph (b), for the word "four" there were substituted "eight".

(6) For the purposes of the application of this Part (in accordance with Article 196(2)) in relation to an employee who was employed as a domestic servant in a private household, references in this Article and Articles 14(4) and (5) and 210 to a personal representative include a person to whom the management of the household has passed, otherwise than in pursuance of a sale or other disposition for valuable consideration, in consequence of the death of the employer.

Death of employer: lay-off and short-time

210.—(1) Where an employee is laid off or kept on short-time and his employer dies, this Part has effect in accordance with the following provisions of this Article.

(2) Where the employee—

(a) has been laid off or kept on short-time for one or more weeks before the death of the employer,

(b) has not given the deceased employer notice of intention to claim before the employer's death,

(c) after the employer's death has his contract of employment renewed, or is re-engaged under a new contract, by a personal representative of the deceased employer, and

(d) after renewal or re-engagement is laid off or kept on shorttime for one or more weeks by the personal representative,

the week in which the employer died and the first week of the employee's employment by the personal representative shall be treated for the purposes of Chapter III as consecutive weeks (and references to four weeks or thirteen weeks shall be construed accordingly).

(3) The following provisions of this Article apply where—

(a) the employee has given the deceased employer notice of intention to claim before the employer's death,

(b) the employer's death occurred before the end of the period of four weeks after the service of the notice, and

(c) the employee has not terminated his contract of employment by notice expiring before the employer's death.

(4) If the contract of employment is not renewed, and the employee is not re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim—

(a) Articles 184 and 187 do not apply, but

(b) (subject to that) Chapter III applies as if the employer had not died and the employee had terminated the contract of employment by a week's notice, or by the minimum notice which he is required to give to terminate the contract (if longer than a week), expiring at the end of that period.

(5) If—

(a) the contract of employment is renewed, or the employee is re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim, and

(b) the employee was laid off or kept on short-time by the deceased employer for one or more of those weeks and is laid off or kept on short-time by the personal representative for the week, or for the next two or more weeks, following the renewal or re-engagement,

paragraph (6) has effect.

(6) Where this paragraph has effect Chapter III applies as if—

(a) all the weeks mentioned in paragraph (5) were consecutive weeks during which the employee was employed (but laid off or kept on short-time) by the same employer, and

(b) the periods specified by Article 185(3)(a) and (b) as the relevant period were extended by any week or weeks any part of which was after the death of the employer and before the date on which the renewal or re-engagement took effect.

Death of employee

211.—(1) Where an employee whose employer has given him notice to terminate his contract of employment dies before the notice expires, this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.

(2) Where—

(a) an employee's contract of employment has been terminated by the employer,

(b) (by virtue of paragraph (5) of Article 180) a date later than the relevant date as defined by the previous provisions of that Article is the relevant date for the purposes of certain provisions of this Order, and

(c) the employee dies before that date,

that paragraph applies as if the notice to which it refers would have expired on the employee's death.

(3) Where—

(a) an employer has given notice to an employee to terminate his contract of employment and has offered to renew his contract of employment or to re-engage him under a new contract, and

(b) the employee dies without having accepted or refused the offer and without the offer having been withdrawn,

Article 176(2) applies as if for the words "he unreasonably refuses" there were substituted "it would have been unreasonable on his part to refuse".

(4) Where an employee's contract of employment has been renewed or he has been re-engaged under a new contract—

(a) if he dies during the trial period without having terminated, or given notice to terminate, the contract, Article 176(4) applies as if for sub-paragraph (d) there were substituted—

"(d) it would have been unreasonable for the employee during the trial period to terminate or give notice to terminate the contract.", and

(b) if during that trial period he gives notice to terminate the contract but dies before the notice expires, Articles 173(2) and 176(4) apply as if the notice had expired (and the contract had been terminated by its expiry) on the date of the employee's death.

(5) Where in the circumstances specified in sub-paragraphs (a) and (b) of paragraph (3) of Article 171 the employee dies before the notice given by him under sub-paragraph (b) of that paragraph expires—

(a) if he dies before his employer has given him a notice such as is specified in paragraph (2) of Article 177, paragraphs (3) and (4) of that Article apply as if the employer had given him such a notice and he had not complied with it, and

(b) if he dies after his employer has given him such a notice, that Article applies as if the employee had not died but did not comply with the notice.

(6) Where an employee has given notice of intention to claim—

(a) if he dies before he has given notice to terminate his contract of employment and before the relevant period (as defined in paragraph (3) of Article 185) has expired, that section does not apply, and

(b) if he dies within the period of seven days after the service of the notice of intention to claim, and before the employer has given a counter-notice, Chapter III applies as if the employer had given a counter-notice within that period of seven days.

(7) Where a claim for a redundancy payment is made by a personal representative of a deceased employee—

(a) if the employee died before the end of the period of six months beginning with the relevant date, paragraph (1) of Article 199, and

(b) if the employee died after the end of the period of six months beginning with the relevant date but before the end of the following period of six months, paragraph (2) of that Article,

applies as if for the words "six months" there were substituted "one year".

Equivalent payments

References to industrial tribunals

212.—(1) Where the terms and conditions (whether or not they constitute a contract of employment) on which a person is employed in employment of any description mentioned in Article 194 include provision—

(a) for the making of a payment to which this Article applies, and

(b) for referring to an industrial tribunal any question as to the right of any person to such a payment in respect of that employment or as to the amount of such a payment,

the question shall be referred to and determined by an industrial tribunal.

(2) This Article applies to any payment by way of compensation for loss of employment of any description mentioned in Article 194 which is payable in accordance with arrangements falling within paragraph (3) or (4).

(3) The arrangements which fall within this paragraph are arrangements made with the approval of the Department of Finance and Personnel for securing that a payment will be made—

(a) in circumstances which in the opinion of that Department correspond (subject to the appropriate modifications) to those in which a right to a redundancy payment would have accrued if the provisions of this Part (apart from Article 194 and this Article) applied, and

(b) on a scale which in the opinion of the Department of Finance and Personnel, taking into account any sums payable in accordance with—

(i) a scheme made under Article 3 of the Superannuation (Northern Ireland) Order 1972, or

(ii) the Superannuation Acts (Northern Ireland) 1967 and 1969,

to or in respect of the person losing the employment in question, corresponds (subject to the appropriate modifications) to that on which a redundancy payment would have been payable if those provisions applied.

(4) The arrangements which fall within this paragraph are those which fall within section 177(3) of the Employment Rights Act 1996.

Other supplementary provisions

Old statutory compensation schemes

213.—(1) The Department may make provision by regulations for securing that where—

(a) (apart from this Article) a person is entitled to compensation under a statutory provision to which this Article applies, and

(b) the circumstances are such that he is also entitled to a redundancy payment,

the amount of the redundancy payment shall be set off against the compensation to which he would be entitled apart from this Article; and any statutory provision to which any such regulations apply shall have effect subject to the regulations.

(2) This Article applies to any statutory provision—

(a) which was in force immediately before 6th December 1965, and

(b) under which the holders of such situations, places or employments as arc specified in that provision are, or may become, entitled to compensation for loss of employment, or for loss or diminution of emoluments or of pension rights, in consequence of the operation of any other statutory provision referred to in that provision.

Notices

214.—(1) Any notice which under this Part is required or authorised to be given by an employer to an employee may be given by being delivered to the employee, or left for him at his usual or last-known place of residence, or sent by post addressed to him at that place.

(2) Any notice which under this Part is required or authorised to m be given by an employee to an employer may be given either by the employee himself or by a person authorised by him to act on his behalf, and (whether given by or on behalf of the employee)—

(a) may be given by being delivered to the employer, or sent by post addressed to him at the place where the employee is or was employed by him, or

(b) if arrangements have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, left for such a person at a place so designated or sent by post to such a person at an address so designated.

(3) In this Article any reference to the delivery of a notice includes, in relation to a notice which is not required by this Part to be in writing, a reference to the oral communication of the notice.

(4) Any notice which, in accordance with any provision of this Article, is left for a person at a place referred to in that provision shall, unless the contrary is proved, be presumed to have been received by him on the day on which it was left there.

(5) Nothing in paragraph (1) or (2) affects the capacity of an employer to act by a servant or agent for the purposes of any provision of this Part (including either of those paragraphs).

(6) In relation to an employee to whom Article 208 applies, this Article has effect as if—

(a) any reference in paragraph (1) or (2) to a notice required or authorised to be given by or to an employer included a reference to a notice which, by virtue of that Article, is required or authorised to be given by or to the person by whom the remuneration is payable,

(b) in relation to a notice required or authorised to be given to that person, any reference to the employer in sub-paragraph (a) or (b) of paragraph (2) were a reference to that person, and

(c) the reference to an employer in paragraph (5) included a reference to that person.

Interpretation

215.—(1) In this Part—

"counter-notice" shall be construed in accordance with Article 184(a),

"dismissal" and "dismissed" shall be construed in accordance with Articles 171 to 173,

"employer's payment" has the meaning given by Article 201,

"notice of intention to claim" shall be construed in accordance with Article 183(1),

"obligatory period of notice" has the meaning given by Article 171(4), and

"trial period" shall be construed in accordance with Article 173(3).

(2) In this Part—

(a) references to an employee being laid off or being eligible for a redundancy payment by reason of being laid off, and

(b) references to an employee being kept on short-time or being eligible for a redundancy payment by reason of being kept on short-time,

shall be construed in accordance with Articles 182 and 183.

PART XIII

PROCEDURE FOR HANDLING REDUNDANCIES

Duty of employer to consult representatives of employees

Duty of employer to consult representatives of employees

216.—(1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be so dismissed.

(2) The consultation shall begin in good time and in any event—

(a) where the employer is proposing to dismiss 100 or more employees as mentioned in paragraph (1), at least 90 days, and

(b) otherwise, at least 30 days,

before the first of the dismissals takes effect.

(3) For the purposes of this Article the appropriate representatives of any employees are—

(a) employee representatives elected by them, or

(b) if the employees are of a description in respect of which an independent trade union is recognised by the employer, representatives of the trade union,

or (in the case of employees who both elect employee representatives and are of such a description) either employee representatives elected by them or representatives of the trade union, as the employer chooses.

(4) The consultation shall include consultation about ways of—

(a) avoiding the dismissals,

(b) reducing the numbers of employees to be dismissed, and

(c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.

(5) In determining how many employees an employer is proposing to dismiss as redundant no account shall be taken of employees in respect of whose proposed dismissals consultation has already begun.

(6) For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives—

(a) the reasons for his proposals,

(b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant,

(c) the total number of employees of any such description employed by the employer at the establishment in question,

(d) the proposed method of selecting the employees who may be dismissed,

(e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect,

(f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any statutory provision) to employees who may be dismissed.

(7) That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.

(8) The employer shall allow the appropriate representatives access to the employees whom it is proposed to dismiss as redundant and shall afford to those representatives such accommodation and other facilities as may be appropriate.

(9) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of paragraph (2), (4) or (6), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

(10) Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.

(11) Where—

(a) the employer has invited any of the employees who may be dismissed to elect employee representatives, and

(b) the invitation was issued long enough before the time when the consultation is required by paragraph (2)(a) or (b) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this Article in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.

(12) This Article does not confer any rights on a trade union, a representative or an employee except as provided by Articles 217 to 220.

Complaint and protective award

217.—(1) Where an employer has failed to comply with any requirement of Article 216, a complaint may be presented to an industrial tribunal on that ground—

(a) in the case of a failure relating to employee representatives, by any of the employee representatives to whom the failure related,

(b) in the case of a failure relating to representatives of a trade union, by the trade union, and

(c) in any other case, by any of the employees who have been or may be dismissed as redundant.

(2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.

(3) A protective award is an award in respect of one or more descriptions of employees—

(a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and

(b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of Article 216,

ordering the employer to pay remuneration for the protected period.

(4) The protected period—

(a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and

(b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of Article 216;

but shall not exceed 90 days in a case falling within Article 216(2)(a) or 30 days in a case falling within Article 216(2)(b).

(5) An industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

(a) before the date on which the last of the dismissals to which the complaint relates takes effect, or

(b) during the period of three months beginning with that date, or

(c) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented during that period of three months.

(6) If on a complaint under this Article a question arises—

(a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of Article 216, or

(b) whether he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,

it is for the employer to show that there were and that he did.

Entitlement under protective award

218.—(1) Where an industrial tribunal has made a protective award, every employee of a description to which the award relates is entitled, subject to the following provisions and to Article 219, to be paid remuneration by his employer for the protected period.

(2) The rate of remuneration payable is a week's pay for each week of the period; and remuneration in respect of a period less than one week shall be calculated by reducing proportionately the amount of a week's pay.

(3) An employee is not entitled to remuneration under a protective award in respect of a period during which he is employed by the employer unless he would be entitled to be paid by the employer in respect of that period—

(a) by virtue of his contract of employment, or

(b) by virtue of Articles 119 to 123 (rights of employee in period of notice),

if that period fell within the period of notice required to be given by Article 118(1).

(4) If an employee of a description to which a protective award relates dies during the protected period, the award has effect in his case as if the protected period ended on his death.

Termination of employment during protected period

219.—(1) Where the employee is employed by the employer during the protected period and—

(a) he is fairly dismissed by his employer otherwise than as redundant, or

(b) he unreasonably terminates the contract of employment,

then, subject to the following provisions, he is not entitled to remuneration under the protective award in respect of any period during which but for that dismissal or termination he would have been employed.

(2) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of his employment under the previous contract) to renew his contract of employment, or to re-engage him under a new contract, so that the renewal or re-engagement would take effect before or during the protected period, and either—

(a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract, or

(b) the offer constitutes an offer of suitable employment in relation to the employee,

the following paragraphs have effect.

(3) If the employee unreasonably refuses the offer, he is not entitled to remuneration under the protective award in respect of a period during which but for that refusal he would have been employed.

(4) If the employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in paragraph (2)(b), there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this Article).

(5) The trial period begins with the ending of his employment under the previous contract and ends with the expiration of the period of four weeks beginning with the date on which he starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with paragraph (6) for the purpose of retraining the employee for employment under that contract.

(6) Any such agreement—

(a) shall be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract,

(b) shall be in writing,

(c) shall specify the date of the end of the trial period, and

(d) shall specify the terms and conditions of employment which will apply in the employee's case after the end of that period.

(7) If during the trial period—

(a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated, or

(b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,

the employee remains entitled under the protective award unless, in a case falling within sub-paragraph (a), he acted unreasonably in terminating or giving notice to terminate the contract.

Complaint by employee to industrial tribunal

220.—(1) An employee may present a complaint to an industrial tribunal on the ground that he is an employee of a description to which a protective award relates and that his employer has failed, wholly or in part, to pay him remuneration under the award.

(2) An industrial tribunal shall not entertain a complaint under this Article unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the day (or, if the complaint relates to more than one day, the last of the days) in respect of which the complaint is made of failure to pay remuneration, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where the tribunal finds a complaint under this Article well-founded it shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

Duty of employer to notify Department

Duty of employer to notify Department of certain redundancies

221.—(1) An employer proposing to dismiss as redundant 100 or more employees at one establishment within a period of 90 days or less shall notify the Department, in writing, of his proposal at least 90 days before the first of those dismissals takes effect.

(2) An employer proposing to dismiss as redundant 20 or more employees at one establishment within such a period shall notify the Department, in writing, of his proposal at least 30 days before the first of those dismissals takes effect.

(3) In determining how many employees an employer is proposing to dismiss as redundant within the period mentioned in paragraph (1) or (2), no account shall be taken of employees in respect of whose proposed dismissal notice has already been given to the Department.

(4) A notice under this Article shall—

(a) be given to the Department by delivery to the Department or by sending it by post to the Department, at such address as the Department may direct in relation to the establishment where the employees proposed to be dismissed are employed,

(b) where there are representatives to be consulted under Article 216, identify them and state the date when consultation with them under that Article began, and

(c) be in such form and contain such particulars, in addition to those required by sub-paragraph (b), as the Department may direct.

(5) After receiving a notice under this Article from an employer the Department may by written notice require the employer to give it such further information as may be specified in the notice.

(6) Where there are representatives to be consulted under Article 216 the employer shall give to each of them a copy of any notice given under paragraph (1) or (2).

The copy shall be delivered to them or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.

(7) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of paragraphs (1) to (6), he shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances.

(8) Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.

Offence of failure to notify

222.—(1) An employer who fails to give notice to the Department in accordance with Article 221 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) s for such an offence shall be instituted only by or with the consent of the Department or by an officer authorised for that purpose by special or general directions of the Department.

(3) An officer so authorised may, although not of counsel or a solicitor, prosecute or conduct proceedings for such an offence before a magistrates' court.

Supplementary provisions

Construction of references to dismissal as redundant etc.

223.—(1) In this Part references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.

(2) For the purposes of any proceedings under this Part, where an employee is or is proposed to be dismissed it shall be presumed, -unless the contrary is proved, that he is or is proposed to be dismissed as redundant.

Construction of references to representatives

224.—(1) For the purposes of this Part persons are employee representatives if—

(a) they have been elected by employees for the specific purpose of being consulted by their employer about dismissals proposed by him, or

(b) having been elected by employees (whether before or after dismissals have been proposed by their employer) otherwise than for that specific purpose, it is appropriate (having regard

to the purposes for which were elected) for the employer to consult them about dismissals proposed by him,

and (in either case) they when they are elected.

(2) References in this relation to an employer, by the trade union to employer. are employed by the employer at the time Part to representatives of a trade union, in are to officials or other persons authorised carry on collective bargaining with the

Power to vary provisions

225. The Department may by order vary—

(a) the provisions of Articles 216(1) and (2) and 221(1) (requirements as to consultation and notification), and

(b) the periods referred to at the end of Article 217(4) (maximum protected period);

but no such order shall be made which has the effect of reducing to less than 30 days the periods referred to in Articles 216(2) and 221(1) as the periods which must elapse before the first of the dismissals takes effect.

Power to adapt provisions in case of collective agreement

226.—(1) This Article applies where there is in force a collective agreement which establishes—

(a) arrangements for providing alternative employment for employees to whom the agreement relates if they are dismissed as redundant by an employer to whom it relates, or

(b) arrangements for the dismissal of employees as redundant.

(2) On the application of all the parties to the agreement the Department may, if it is satisfied having regard to the provisions of the agreement that the arrangements are on the whole at least as favourable to those employees as the foregoing provisions of this Part, by order adapt, modify or exclude any of those provisions both in their application to all or any of those employees and in their application to any other employees of any such employer.

(3) The Department shall not make such an order unless the agreement—

(a) provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee to whom the agreement relates claims that any employer or other person to whom it relates has not complied with the provisions of the agreement, and

(b) provides that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached,

or indicates that any such employee may present a complaint to an industrial tribunal that any such employer or other person has not complied with those provisions.

(4) An order under this Article may confer on an industrial tribunal to which a complaint is presented as mentioned in paragraph (3) such powers and duties as the Department considers appropriate.

(5) An order under this Article may be varied or revoked by a subsequent order thereunder either in pursuance of an application made by all or any of the parties to the agreement in question or without any such application.

PART XIV

INSOLVENCY OF EMPLOYERS

Employee's rights on insolvency of employer

227. If, on an application made to the Department in writing by an employee, the Department is satisfied that—

(a) the employee's employer has become insolvent,

(b) the employee's employment has been terminated, and

(c) on the appropriate date the employee was entitled to be paid the whole or part of any debt to which this Part applies,

the Department shall, subject to Article 231, pay the employee out of the Northern Ireland National Insurance Fund the amount to which, in the opinion of the Department, the employee is entitled in respect of the debt.

Insolvency

228.—(1) An employer has become insolvent for the purposes of this Part—

(a) where the employer is an individual, if (but only if) paragraph (2) is satisfied, and

(b) where the employer is a company, if (but only if) paragraph (3) is satisfied.

(2) This paragraph is satisfied in the case of an employer who is an individual if—

(a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors, or

(b) he has died and his estate falls to be administered in accordance with an order under Article 365 of the Insolvency (Northern Ireland) Order 1989.

(3) This paragraph is satisfied in a case of an employer which is a company—

(a) if a winding up order or an administration order has been made, or a resolution for voluntary winding up has been passed, with respect to the company,

(b) if a receiver or a manager of the company's undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or

(c) if a voluntary arrangement proposed in the case of the company for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 has been approved under that Part.

Debts to which Part applies

229.—(1) This Part applies to the following debts—

(a) any arrears of pay in respect of one or more (but not more than eight) weeks,

(b) any amount which the employer is liable to pay the employee for the period of notice required by Article 118(1) or (2) or for any failure of the employer to give the period of notice required by Article 118(1),

(c) any holiday pay—

(i) in respect of a period or periods of holiday not exceeding six weeks in all, and

(ii) to which the employee became entitled during the twelve months ending with the appropriate date,

(d) any basic award of compensation for unfair dismissal, and

(e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice or articled clerk.

(2) For the purposes of paragraph (1)(a) the following amounts shall be treated as arrears of pay—

(a) a guarantee payment,

(b) any payment for time off under Part VII;

(c) remuneration on suspension on medical grounds under Article 96 and remuneration on suspension on maternity grounds under Article 100, and

(d) remuneration under a protective award made under Article 217.

(3) In paragraph (1)(c) "holiday pay", in relation to an employee, means—

(a) pay in respect of a holiday actually taken by the employee, or

(b) any accrued holiday pay which, under the employee's contract of employment, would in the ordinary course have become payable to him in respect of the period of a holiday if his employment with the employer had continued until he became entitled to a holiday.

(4) A sum shall be taken to be reasonable for the purposes of paragraph (1)(e) in a case where a trustee in bankruptcy or liquidator has been or is required to be appointed if it is admitted to be reasonable by the trustee in bankruptcy or liquidator under Article 319 of the Insolvency (Northern Ireland) Order 1989 (effect of bankruptcy on apprenticeships etc.), whether as originally enacted or as applied to the winding up of a company by rules under Article 359 of that Order.

The appropriate date

230. In this Part "the appropriate date"—

(a) in relation to arrears of pay (not being remuneration under a protective award made under Article 217) and to holiday pay, means the date on which the employer became insolvent,

(b) in relation to a basic award of compensation for unfair dismissal and to remuneration under a protective award so made, means whichever is the latest of—

(i) the date on which the employer became insolvent,

(ii) the date of the termination of the employee's employment, and

(iii) the date on which the award was made, and

(c) in relation to any other debt to which this Part applies, means whichever is the later of—

(i) the date on which the employer became insolvent, and

(ii) the date of the termination of the employee's employment.

Limit on amount payable under Article 227

231.—(1) The total amount payable to an employee in respect of any debt to which this Part applies, where the amount of the debt is referable to a period of time, shall not exceed—

(a) £210 in respect of any one week, or

(b) in respect of a shorter period, an amount bearing the same proportion to £210 as that shorter period bears to a week.

(2) The Department may by order vary the limit specified in paragraph (1).

Role of relevant officer

232.—(1) Where a relevant officer has been, or is required to be, appointed in connection with an employer's insolvency, the Department shall not make a payment under Article 227 in respect of

a debt until it has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the appropriate date and to remain unpaid.

(2) If the Department is satisfied that it does not require a statement under paragraph (1) in order to determine the amount of a debt which was owed to the employee on the appropriate date and remains unpaid, it may make a payment under Article 227 in respect of the debt without having received such a statement.

(3) A relevant officer shall, on request by the Department, provide it with a statement for the purposes of paragraph (1) as soon as is reasonably practicable.

(4) The following are relevant officers for the purposes of this Article—

(a) a trustee in bankruptcy,

(b) a liquidator,

(c) an administrator,

(d) a receiver or manager,

(e) a trustee under a composition or arrangement between employer and his creditors, and

(f) a trustee under a trust deed for his creditors executed by employer.

(5) In paragraph (4)(e) "trustee" includes the supervisor of a voluntary arrangement proposed for the purposes of, and approved under, Part II or VIII of the Insolvency (Northern Ireland) Order 1989.

Complaints to industrial tribunals

233.—(1) A person who has applied for a payment under Article 227 may present a complaint to an industrial tribunal—

(a) that the Department has failed to make any such payment, or

(b) that any such payment made by the Department is less than the amount which should have been paid.

(2) An industrial tribunal shall not consider a complaint under paragraph (1) unless it is presented—

(a) before the end of the period of three months beginning with the date on which the decision of the Department on the application was communicated to the applicant, or within such further period as the tribunal considers reasonable in a case where it is not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds that the Department ought to make a payment under Article 227, the tribunal shall—

(a) make a declaration to that effect, and

(b) declare the amount of any such payment which it finds the Department ought to make.

Transfer to Department of rights and remedies

234.—(1) Where, in pursuance of Article 227, the Department makes a payment to an employee in respect of a debt to which this Part applies—

(a) on the making of the payment any rights and remedies of the employee in respect of the debt (or, if the Department has paid only part of it, in respect of that part) become rights and remedies of the Department, and

(b) any decision of an industrial tribunal requiring an employer to pay that debt to the employee has the effect that the debt (or the part of it which the Department has paid) is to be paid to the Department.

(2) Where a debt (or any part of a debt) in respect of which the Department has made a payment in pursuance of Article 227 constitutes a preferential debt within the meaning of the Insolvency (Northern Ireland) Order 1989 for the purposes of any provision of that Order (including any such provision as applied by any order made under that Order) or any provision of the Companies (Northern Ireland) Order 1986, the rights which become rights of the Department in accordance with paragraph (1) include any right arising under any such provision by reason of the status of the debt (or that part of it) as a preferential debt.

(3) In computing for the purposes of any provision mentioned in paragraph (2) the aggregate amount payable in priority to other creditors of the employer in respect of—

(a) any claim of the Department to be paid in priority to other creditors of the employer by virtue of paragraph (2), and

(b) any claim by the employee to be so paid made in his own right,

any claim of the Department to be so paid by virtue of paragraph (2) shall be treated as if it were a claim of the employee.

(4) But the Department shall be entitled, as against the employee, to be so paid in respect of any such claim of the Department's (up to the full amount of the claim) before any payment is made to the employee in respect of any claim by the employee to be so paid made in his own right.

(5) Any sum recovered by the Department in exercising any right, or pursuing any remedy, which is the Department's by virtue of this Article shall be paid into the Northern Ireland National Insurance Fund.

Power to obtain information

235.—(1) Where an application is made to the Department under Article 227 in respect of a debt owed by an employer, the Department may require—

(a) the employer to provide the Department with such information as it may reasonably require for the purpose of determining whether the application is well-founded, and

(b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Department any such document in that person's custody or under his control which is of such a description as the Department may require.

(2) Any such requirement—

(a) shall be made by notice in writing given to the person on whom the requirement is imposed, and

(b) may be varied or revoked by a subsequent notice so given.

(3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this Article he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If a person, in purporting to comply with a requirement of a notice under this Article, knowingly or recklessly makes any false statement he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART XV

MISCELLANEOUS

CHAPTER I

PARTICULAR TYPES OF EMPLOYMENT

Crown employment etc.

Crown employment

236.—(1) Subject to Articles 237 and 238, the provisions of this Order to which this Article applies have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other employees or workers.

(2) This Article applies to—

(a) Parts I to IX,

(b) in Part X, Articles 124 and 125,

(c) Part XI, and

(d) this Part and Part XVI.

(3) 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.

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

(a) references to an employee or a worker shall be construed as references to a person in Crown employment,

(b) references to a contract of employment, or a worker's contract, shall be construed as references to the terms of employment of a person in Crown employment,

(c) references to dismissal, or to the termination of a worker's contract, shall be construed as references to the termination of Crown employment,

(d) references to redundancy shall be construed as references to the existence of such circumstances as are treated, in accordance with any arrangements falling within Article 212(3) or (4) for the time being in force, as equivalent to redundancy in relation to Crown employment, and

(e) references to an undertaking shall be construed—

(i) in relation to a Minister of the Crown, as references to his functions or (as the context may require) to the department of which he is in charge, and

(ii) in relation to a government department, officer or body, as references to the functions of the department, officer or body or (as the context may require) to the department, officer or body.

(5) Where the terms of employment of a person in Crown employment restrict his right to take part in—

(a) certain political activities, or

(b) activities which may conflict with his official functions,

nothing in Article 78 requires him to be allowed time off work for public duties connected with any such activities.

(6) Part II applies in relation to Crown employment otherwise than under a contract only where the terms of employment correspond to those of a contract of employment.

(7) Article 27, and the other provisions of Part II applying in relation to that Article, bind the Crown so far as they relate to the activities of an employment agency in relation to employment to which those provisions apply.

(8) Articles 194 and 195 are without prejudice to any exemption or immunity of the Crown.

Armed forces

237.—(1) Article 236—

(a) applies to service as a member of the naval, military or air forces of the Crown but subject to the following provisions of this Article, and

(b) applies to employment by an association established for the purposes of Part VI of the Reserve Forces Act 1980.

(2) The provisions of this Order which have effect by virtue of Article 236 in relation to service as a member of the naval, military or air forces of the Crown are—

(a) Parts I and III,

(b) in Part VII, Articles 83 to 85,

(c) Parts VIII and IX,

(d) in Part X, Articles 124 and 125,

(e) Part XI, apart from Articles 132 to 134 and 136, and

(f) this Part and Part XVI.

(3) The Department may by order—

(a) amend paragraph (2) by making additions to, or omissions from, the provisions for the time being specified in that paragraph, and

(b) make any provision for the time being so specified 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,

but no provision contained in Part IV may be added to the provisions for the time being specified in paragraph (2).

(4) Modifications made by an order under paragraph (3) may include provision precluding the making of a complaint or reference to any industrial tribunal unless the person aggrieved has availed himself of the service redress procedures applicable to him.

(5) Where modifications made by an order under paragraph (3) include provision such as is mentioned in paragraph (4), the order shall also include provision designed to secure that the service redress procedures result in a determination, or what is to be treated under the order as a determination, in sufficient time to enable a complaint or reference to be made to an industrial tribunal.

(6) In paragraphs (4) and (5) "the service redress procedures" means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in—

(a) sections 180 and 181 of the Army Act 1955,

(b) sections 180 and 181 of the Air Force Act 1955, and

(c) section 130 of the Naval Discipline Act 1957.

(7) No provision shall be made by virtue of paragraph (4) which has the effect of substituting a period longer than six months for any period specified as the normal period for a complaint or reference.

(8) In paragraph (7) "the normal period for a complaint or reference", in relation to any matter within the jurisdiction of an industrial tribunal, means the period specified in the relevant statutory provision as the period within which the complaint or reference must be made (disregarding any provision permitting an extension of that period at the discretion of the tribunal).

National security

238.—(1) The provisions of this Order to which this Article applies do not have effect in relation to any Crown employment in respect of which there is in force a certificate issued by or on behalf of the Secretary of State certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from those provisions for the purpose of safeguarding national security.

(2) This Article applies to—

(a) Part II,

(b) Part III, so far as it relates to itemised pay statements,

(c) Part V,

(d) Chapter II of Part VI;

(e) in Part VII, Articles 78 to 82 and 92 to 95;

(f) in Part VIII, Articles 96 and 97, and Articles 101 and 102 so far as relating to those Articles,

(g) in Part X, Articles 124 and 125, except where they apply by virtue of Article 124(4),

(h) Part XI, except so far as relating to a dismissal which is treated as unfair—

(i) by Article 131(1) to (3), 132 or 134, or

(ii) by paragraph (1) of Article 137 by reason of the application of paragraph (2), (3) or (5) of that Article, and

(i) Part I, this Part and Part XVI (so far as relating to any of the provisions specified in sub-paragraphs (a) to (h)).

(3) Any document purporting to be a certificate issued as mentioned in paragraph (1)—

(a) shall be received in evidence, and

(b) unless the contrary is proved, shall be deemed to be such a certificate.

Excluded classes of employment

Employment outside Northern Ireland

239.—(1) Articles 33 to 39 and Articles 118 to 123 do not apply in relation to employment during any period when the employee is engaged in work wholly or mainly outside Northern Ireland unless—

(a) the employee ordinarily works in Northern Ireland and the work outside Northern Ireland is for the same employer, or

(b) the law which governs his contract of employment is the law of Northern Ireland.

(2) The provisions to which this paragraph applies do not apply to employment where under the employee's contract of employment he ordinarily works outside Northern Ireland.

(3) Paragraph (2) applies to—

(a) Part II

(b) in Part III, Articles 40 to 42,

(c) Parts IV, V and VI,

(d) Part VII, apart from Articles 86 to 88,

(e) Parts VIII and IX,

(f) in Part X, Articles 124 and 125,

(g) (subject to paragraph (4)) Part XI, and

(h) Part XIII.

(4) Part XI applies to employment where under her contract of employment the employee ordinarily works outside Northern Ireland if—

(a) Article 116 applies to her dismissal, or

(b) she is treated as dismissed by Article 128.

(5) For the purposes of paragraphs (2) and (4), a person employed to work on board a ship registered in the United Kingdom shall be regarded as a person who under his contract ordinarily works in Northern Ireland unless—

(a) the ship is registered at a port outside Northern Ireland,

(b) the employment is wholly outside Northern Ireland, or

(c) the person is not ordinarily resident in Northern Ireland.

(6) An employee—

(a) is not entitled to a redundancy payment if he is outside Northern Ireland on the relevant date unless under his contract of employment he ordinarily worked in Northern Ireland, and

(b) is not entitled to a redundancy payment if under his contract of employment he ordinarily works outside Northern Ireland unless on the relevant date he is in Northern Ireland in accordance with instructions given to him by his employer.

(7) Part XIV does not apply to employment where, under the employee's contract of employment, he ordinarily works outside the territory of the member States of the European Communities and of Norway and Iceland.

Fixed-term contracts

240.—(1) Part XI does not apply to dismissal from employment under a contract for a fixed term of one year or more if—

(a) the dismissal consists only of the expiry of that term without its being renewed, and

(b) before the term expires the employee has agreed in writing to exclude any claim in respect of rights under that Part in relation to the contract.

(2) An employee employed under a contract of employment for a fixed term of two years or more is not entitled to a redundancy payment in respect of the expiry of that term without its being renewed (whether by the employer or by an associated employer of his) if, before the term expires, the employee has agreed in writing to exclude any right to a redundancy payment in that event.

(3) An agreement such as is mentioned in paragraph (1) or (2) may be contained—

(a) in the contract itself, or

(b) in a separate agreement.

(4) Where—

(a) an agreement such as is mentioned in paragraph (2) is made during the currency of a fixed term, and

(b) the term is renewed,

the agreement shall not be construed as applying to the term as renewed; but this paragraph is without prejudice to the making of a further agreement in relation to the renewed term.

Short-term employment

241.—(1) Articles 33 to 39 do not apply to an employee if his employment continues for less than one month.

(2) The provisions of Part XIII do not apply to employment—

(a) under a contract for a fixed term of three months or less, or

(b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

where the employee has not been continuously employed for a period of more than three months.

Mariners

242.—(1) Articles 33 to 39, Part IV and Articles 118 to 123 do not apply to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State.

(2) Part II, Articles 40 to 42, Part V, Part VI (other than Article 69), Part VII (other than Articles 86 to 88), Parts VIII and IX, Articles 124 and 125 and (subject to paragraph (3)) Parts XI to XIV do not apply to employment as master, or as a member of the crew, of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel.

(3) Part XI applies to employment such as is mentioned in paragraph (2) if—

(a) Article 116 applies to the employee's dismissal, or

(b) she is treated as dismissed by Article 128,

and Part XII applies to employment such as is so mentioned if the employee is treated as dismissed by Article 172.

(4) Articles 40 to 42 and 78 to 82 and Part XIV do not apply to employment as a merchant seaman.

(5) In paragraph (4) "employment as a merchant seaman"—

(a) does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer, but

(b) subject to that, includes—

(i) employment as a master or a member of the crew of any ship,

(ii) employment as a trainee undergoing training for the sea service, and

(iii) employment in or about a ship in port by the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on a ship while it is in port.

(6) Article 239(6) does not apply to an employee, and Article 240(3) does not apply to a contract of employment, if the employee is—

(a) employed as a master or seaman in a British ship, and

(b) ordinarily resident in Northern Ireland.

Police officers

243.—(1) Articles 40 to 42, Part V, Part VI (other than Article 69), Part VII (other than Articles 86 to 88), Parts VIII and IX, Articles 124 and 125, Part XI, Article 172 and Part XIII do not apply

to employment under a contract of employment in police service or to persons engaged in such employment.

(2) Part II does not apply in relation to police service.

(3) In this Article "police service" means—

(a) service as a member of the Royal Ulster Constabulary or Royal Ulster Constabulary Reserve;

(b) subject to—

(i) section 126 of the Criminal Justice and Public Order Act 1994 (prison staff not to be regarded as in police service), and

(ii) Article 19 of the Airports (Northern Ireland) Order 1994 (airport constables not to be regarded as in police service),

service in any other capacity by virtue of which a person has the powers or privileges of a constable.

CHAPTER II

OTHER MISCELLANEOUS MATTERS

Restrictions on disclosure of information

National security etc.

244.—(1) Where in the opinion of the Secretary of State the disclosure of any information would be contrary to the interests of national security or would endanger public safety or public order—

(a) nothing in any of the provisions to which this Article applies requires any person to disclose the information, and

(b) no person shall disclose the information in any proceedings in any court or tribunal relating to any of those provisions.

(2) This Article applies to—

(a) Part III, so far as it relates to employment particulars,

(b) in Part VI, Articles 68 and 70, and Articles 71 and 72 so far as relating to those Articles,

(c) in Part VII, Articles 83 to 85 and 89 to 91,

(d) in Part VIII, Articles 98 to 100, and Articles 101 and 102 so far as relating to those Articles,

(e) Part IX,

(f) in Part X, Articles 124 and 125 where they apply by virtue of Article 124(4),

(g) Part XI so far as relating to a dismissal which is treated as unfair—

(i) by Article 131(1) to (3), 132 or 134, or

(ii) by paragraph (1) of Article 137 by reason of the application of paragraph (2), (3) or (5) of that Article, and

(i) Part I, this Part and Part XVI (so far as relating to any of the provisions in sub-paragraphs (a) to (g)).

Contracting out etc. and remedies

Restrictions on contracting out

245.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Order, or

(b) to preclude a person from bringing any proceedings under this Order before an industrial tribunal.

(2) Paragraph (1)—

(a) does not apply to any provision in a collective agreement excluding rights under Article 60 if an order under Article 67 is for the time being in force in respect of it,

(b) does not apply to any provision in a dismissal procedures agreement excluding the right under Article 126 if that provision is not to have effect unless an order under Article 142 is for the time being in force in respect of it,

(c) does not apply to any provision in an agreement if an order under Article 192 is for the time being in force in respect of it,

(d) does not apply to any provision of an agreement relating to dismissal from employment such as is mentioned in Article 240(1) or (3),

(e) does not apply to any agreement to refrain from instituting or continuing proceedings where the Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996, and

(f) does not apply to any agreement to refrain from instituting or continuing before an industrial tribunal any proceedings within Article 20(1)(c) (proceedings under this Order where conciliation available) of the Industrial Tribunals (Northern Ireland) Order 1996 if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement, and

(g) does not apply to any provision of a collective agreement excluding rights under Part XIII if an order under Article 226 is in force in respect of it.

(3) For the purposes of paragraph (2)(f) the conditions regulating compromise agreements under this Order are that—

(a) the agreement must be in writing,

(b) the agreement must relate to the particular complaint,

(c) the employee or worker must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal.

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice,

(e) the agreement must identify the adviser, and

(f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.

(4) In paragraph (3)—

"independent", in relation to legal advice received by an employee or worker, means that the advice is given by a lawyer who is not acting in the matter for the employer or an associated employer, and

"qualified lawyer" means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

Law governing employment

246.—(1) For the purposes of this Order it is immaterial whether the law which (apart from this Order) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

(2) Paragraph (1) is subject to Article 239(1)(b).

Remedy for infringement of certain rights

247.—(1) The remedy of an employee for infringement of any of the rights conferred by Article 40, Parts V to IX, Article 124, Part XI, Part XIII and Part XIV is, where provision is made for a complaint or the reference of a question to an industrial tribunal, by way of such a complaint or reference and not otherwise.

(2) The remedy of a worker in respect of any contravention of Article 45, 47, 50(1) or 53(1) is by way of a complaint under Article 55 and not otherwise.

(3) The remedy of a person for conduct which is unlawful by virtue of Part II is by way of a complaint to an industrial tribunal in accordance with that Part, and not otherwise.

No other legal liability arises by reason that conduct is unlawful by virtue of that Part.

General provisions about death of employer or employee

Institution or continuance of tribunal proceedings

248.—(1) Where an employer has died, any tribunal proceedings arising under any of the provisions of this Order to which this Article applies may be defended by a personal representative of the deceased employer.

(2) This Article and Article 249 apply to—

(a) Part III, so far as it relates to itemised pay statements,

(b) Part V,

(c) Part VI,

(d) Part VII, apart from Articles 86 to 88,

(e) Parts VIII and IX,

(f) in Part X, Articles 124 and 125, and

(g) Parts XI to XIV.

(3) Where an employee has died, any tribunal proceedings arising under any of the provisions of this Order to which this Article applies may be instituted or continued by a personal representative of the deceased employee.

(4) If there is no personal representative of a deceased employee, any tribunal proceedings arising under any of the provisions of this Order to which this Article applies may be instituted or continued on behalf of the estate of the deceased employee by any appropriate person appointed by the industrial tribunal.

(5) In paragraph (4) "appropriate person" means a person who is—

(a) authorised by the employee before his death to act in connection with the proceedings, or

(b) the widow or widower, child, parent or brother or sister of the deceased employee;

and in Part XII and the following provisions of this Article and Article 249 references to a personal representative include a person appointed under paragraph (4).

(6) In a case where proceedings are instituted or continued by virtue of paragraph (4), any award made by the industrial tribunal shall be—

(a) made in such terms, and

(b) enforceable in such manner,

as the Department may by regulations provide.

(7) Any reference in the provisions of this Order to which this Article applies to the doing of anything by or in relation to an employer or employee includes a reference to the doing of the thing by or in relation to a personal representative of the deceased employer or employee.

(8) Any reference in the provisions of this Order to which this Article applies to a thing required or authorised to be done by or in relation to an employer or employee includes a reference to a thing required or authorised to be done by or in relation to a personal representative of the deceased employer or employee,

(9) Paragraphs (7) and (8) do not prevent a reference to a successor of an employer including a personal representative of a deceased employer.

Rights and liabilities accruing after death

249.—(1) Any right arising under any of the provisions of this Order to which this Article applies which accrues after the death of an employee devolves as if it had accrued before his death.

(2) Where an industrial tribunal determines under any provision of Part XII that an employer is liable to pay to a personal representative of a deceased employee—

(a) the whole of a redundancy payment to which he would have been entitled but for some provision of Part XII or Article 248, or

(b) such part of such a redundancy payment as the tribunal thinks fit,

the reference in paragraph (1) to a right includes any right to receive it.

(3) Where—

(a) by virtue of any of the provisions to which this Article applies a personal representative is liable to pay any amount, and

(b) the liability has not accrued before the death of the employer,

it shall be treated as a liability of the deceased employer which had accrued immediately before his death.

Modifications of Order

Powers to amend Order

250.—(1) 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,

(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, or

(c) vary, or exclude the operation of, any of the provisions to which this sub-paragraph applies.

(2) Paragraph (1)(c) applies to Articles 61(2), 97(2), 118(5), 124(3), 140(1), 141(1), 194, 195(1), 239(2), (3) and (5), Article 241(2) and 242(1), (2), (4) and (5).

(3) The Department may by order amend any of—

(a) Articles 116, 117, 129(6), 130(5) and 131(4),

(b) Articles 140(3), 141(2) and 142(2) so far as relating to Article 116, and

(c) Articles 22(3)(a) and (5)(a), 23(4)(a), 148(5), 149(4), 153(6), 162, 172(2), 180(7), 181(3), 191(2), 192(6), 197(7), 239(4) and 242(3),

or modify the application of any of those provisions to any description of case.

(4) The Department may by order provide that, subject to any such modifications and exceptions as may be prescribed in the order, Article 68, and any other provisions of this Order so far as relating to that Article, shall apply to such descriptions of persons other than employees as may be so prescribed as to employees (but as if references to their employer were to such person as may be so prescribed).

(5) The provisions of this Article are without prejudice to any other power of the Department to amend, vary or repeal any provision of this Order or to extend or restrict its operation in relation to any person or employment.

PART XVI

GENERAL AND SUPPLEMENTARY

General

Orders and regulations

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

(2) An order to which this paragraph applies shall—

(a) be laid before the Assembly as soon as may be after it is

(b) come into operation on such date as may be specified therein; and

(c) cease to have effect on the expiration of a period of six 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.

(3) Paragraph (2) applies to—

(a) an order under Article 23(2), 63(7), 104(3), 105(5), 111(3), 154(2), 158(2), 159(7), 231(2) or 237(3);

(b) an order under Article 250, other than an order under paragraph (1)(b) of that Article which specifies only provisions contained in Part XII.

(4) Subject to paragraph (5) all other orders made by the Department under this Order shall be subject to negative resolution.

(5) Paragraph (4) does not apply to—

(a) an order under Article 67; or

(b) an order under Part II of Schedule 2.

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

Financial provisions

252. There shall be paid out of the Northern Ireland National Insurance Fund into the Consolidated Fund sums equal to the amount of—

(a) any expenses incurred by the Department in consequence of Part XII, and

(b) any expenses incurred by the Department (or by persons acting on its behalf in exercising its functions under Part XIV.

Reciprocal arrangements

Reciprocal arrangements with Great Britain

253.—(1) The Department shall be the appropriate Northern Ireland authority for the purposes of section 238 of the Employment Rights Act 1996 ("the Act of 1996").

(2) Accordingly, the Department may, with the consent of the Department of Finance and Personnel, make reciprocal arrangements with the Secretary of State for co-ordinating the relevant provisions of this Order with the corresponding provisions of the Act of 1996 so as to ensure that they operate, to such extent as may be provided by the arrangements, as a single system.

(3) In this Article "the relevant provisions of this Order" means the provisions of this Order which correspond to the provisions of the Act of 1996 which are not excepted provisions as defined in section 238(2) of that Act.

(4) The Department may make regulations for giving effect to any arrangements made under this Article.

(5) Such regulations may provide that the relevant provisions of this Order have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—

(a) for securing that acts, omissions and events having any effect for the purposes of the Act of 1996 have a corresponding effect for the purposes of this Order (but not so as to confer a right to double payment in respect of the same act, omission or event), and

(b) for determining, in cases where rights accrue both under this Order and under the Act of 1996, which of those rights is available to the person concerned.

Reciprocal arrangements with Isle of Man

254.—(1) If an Act of Tynwald is passed for purposes similar to the purposes of Part XII, the Department may, with the consent of the Department of Finance and Personnel, make reciprocal arrangements with the appropriate Isle of Man authority for co-ordinating the provisions of that Part with the corresponding provisions of the Act of Tynwald so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.

(2) For the purposes of giving effect to any arrangements made under paragraph (1) the Department may, in conjunction with the appropriate Isle of Man authority, make any necessary financial adjustments between the Northern Ireland National Insurance Fund and any fund established under the Act of Tynwald.

(3) The Department may make regulations for giving effect to any arrangements made under paragraph (1).

(4) Regulations under paragraph (3) may provide that Part XII has effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—

(a) for securing that acts, omissions and events having any effect for the purposes of the Act of Tynwald have a corresponding effect for the purposes of Part XII (but not so as to confer a right to double payment in respect of the same act, omission or event), and

(b) for determining, in cases where rights accrue both under this Order and under the Act of Tynwald, which of those rights is available to the person concerned.

(5) In this Article "the appropriate Isle of Man authority" means such authority as may be specified in an Act of Tynwald.

Final provisions

Consequential amendments

255. Schedule 1 (consequential amendments) shall have effect.

Transitionals, savings and transitory provisions

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

Repeals and revocations

257.—(1) The statutory provisions specified in Schedule 3 are repealed to the extent specified in the third column of that Schedule.

(2) The following statutory provisions are revoked—

(a) the Insolvency of Employers (Excluded Classes) Regulations (Northern Ireland) 1983;

(b) the Employment Protection (Part-time Employees) Regulations (Northern Ireland) 1995;

(c) the Collective Redundancies and Transfer of Undertakings (Amendment) Regulations (Northern Ireland) 1995.

N.H. Nicholls
Clerk of the Privy Council