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Employment Act (Northern Ireland) 2011, SCHEDULE 3. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 3

Section 15.

TIME OFF FOR STUDY OR TRAINING

PART 1

PROVISIONS INSERTED AS PART 7A OF THE EMPLOYMENT RIGHTS (NORTHERN IRELAND) ORDER 1996

“PART 7A

STUDY AND TRAINING

Statutory right to make request in relation to study or training

95A.—(1) A qualifying employee may make an application under this Article to his employer.

(2) An application under this Article (an “Article 95A application”) is an application that meets—

- (a) the conditions in paragraphs (3) to (5), and
- (b) any further conditions specified by the Department in regulations.

(3) The application must be made for the purpose of enabling the employee to undertake study or training (or both) within paragraph (4).

(4) Study or training is within this paragraph if its purpose is to improve—

- (a) the employee's effectiveness in the employer's business, and
- (b) the performance of the employer's business.

(5) The application must state that it is an application under this Article.

(6) An employee is a qualifying employee for the purposes of this Article if the employee—

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- (a) satisfies any conditions about duration of employment specified by the Department in regulations, and
 - (b) is not a person within paragraph (7).
- (7) The following persons are within this paragraph—
- (a) a person of compulsory school age;
 - (b) a person to whom Article 91A (right to time off for young person for study or training) applies;
 - (c) an agency worker;
 - (d) a person of a description specified by the Department in regulations.
- (8) Nothing in this Part prevents an employee and an employer from making any other arrangements in relation to study or training.
- (9) In this Article—
- “agency worker” means a worker supplied by a person (the “agent”) to do work for another person (the “principal”) under a contract or other arrangement between the agent and principal;
- “compulsory school age” has the meaning given in Article 46 of the Education and Libraries (Northern Ireland) Order 1986.

Article 95A application: supplementary

- 95B.**—(1) An Article 95A application may—
- (a) be made in relation to study or training of any description (subject to Article 95A(3) and (4) and regulations under Article 95A(2));
 - (b) relate to more than one description of study or training.
- (2) The study or training may (in particular) be study or training that (if undertaken)—
- (a) would be undertaken on the employer's premises or elsewhere (including at the employee's home);
 - (b) would be undertaken by the employee while performing the duties of the employee's employment or separately;
 - (c) would be provided or supervised by the employer or by someone else;
 - (d) would be undertaken without supervision;
 - (e) would be undertaken within or outside the United Kingdom.
- (3) The study or training need not be intended to lead to the award of a qualification to the employee.
- (4) An Article 95A application must—
- (a) give the following details of the proposed study or training—

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- (i) its subject matter;
 - (ii) where and when it would take place;
 - (iii) who would provide or supervise it;
 - (iv) what qualification (if any) it would lead to;
 - (b) explain how the employee thinks the proposed study or training would improve—
 - (i) the employee's effectiveness in the employer's business, and
 - (ii) the performance of the employer's business;
 - (c) contain information of any other description specified by the Department in regulations.
- (5) The Department may make regulations about—
- (a) the form of an Article 95A application;
 - (b) when an Article 95A application is to be taken to be received for the purposes of this Part.

Employer's duties in relation to application

- 95C.**—(1) Paragraphs (4) to (7) apply if—
- (a) an employer receives an Article 95A application (the “current application”) from an employee, and
 - (b) during the relevant 12 month period the employer has not received another Article 95A application (an “earlier application”) from the employee.
- (2) The “relevant 12 month period” is the 12 month period ending with the day on which the employer receives the current application.
- (3) The Department may make regulations about circumstances in which, at an employee's request, an employer is to be required to ignore an earlier application for the purposes of paragraph (1).
- (4) The employer must deal with the application in accordance with regulations made by the Department.
- (5) The employer may refuse an Article 95A application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to the application.
- (6) The employer may refuse part of an Article 95A application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to that part.
- (7) The permissible grounds for refusal are—

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- (a) that the proposed study or training to which the application, or the part in question, relates would not improve—
 - (i) the employee's effectiveness in the employer's business, or
 - (ii) the performance of the employer's business;
- (b) the burden of additional costs;
- (c) detrimental effect on ability to meet customer demand;
- (d) inability to re-organise work among existing staff;
- (e) inability to recruit additional staff;
- (f) detrimental impact on quality;
- (g) detrimental impact on performance;
- (h) insufficiency of work during the periods the employee proposes to work;
- (i) planned structural changes;
- (j) any other grounds specified by the Department in regulations.

Regulations about dealing with applications

95D.—(1) Regulations under Article 95C(4) may, in particular, include provision—

- (a) for the employee to have a right to be accompanied by a person of a specified description when attending meetings held in relation to an Article 95A application in accordance with any such regulations;
 - (b) for the postponement of such a meeting if the employee's companion under sub-paragraph (a) is not available to attend it;
 - (c) in relation to companions under sub-paragraph (a), corresponding to Article 12(6) and (7) of the Employment Relations (Northern Ireland) Order 1999 (right to paid time off to act as companion, etc.);
 - (d) in relation to the rights under sub-paragraphs (a) to (c), for rights to complain to an industrial tribunal and not to be subjected to a detriment, and about unfair dismissal;
 - (e) for Article 95A applications to be treated as withdrawn in specified circumstances.
- (2) In this Article “specified” means specified in the regulations.

Employee's duties in relation to agreed study or training

95E.—(1) This Article applies if an employer has agreed to an Article 95A application, or part of an Article 95A application, made by an employee in relation to particular study or training (the “agreed study or training”).

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- (2) The employee must inform the employer if the employee—
 - (a) fails to start the agreed study or training;
 - (b) fails to complete the agreed study or training;
 - (c) undertakes, or proposes to undertake, study or training that differs from the agreed study or training in any respect (including those specified in Article 95C(4)(a)).
- (3) The Department may make regulations about the way in which the employee is to comply with the duty under paragraph (2).

Complaints to industrial tribunals

- 95F.**—(1) An employee who makes an Article 95A application may present a complaint to an industrial tribunal that—
- (a) the employer has failed to comply with Article 95C(4), (5) or (6), or
 - (b) the employer's decision to refuse the application, or part of it, is based on incorrect facts.

This is subject to the following provisions of this Article.

(2) No complaint under this Article may be made in respect of an Article 95A application which has been disposed of by agreement or withdrawn.

(3) In the case of an Article 95A application that has not been disposed of by agreement or withdrawn, a complaint under this Article may only be made if the employer—

- (a) notifies the employee of a decision to refuse the application (or part of it) on appeal, or
- (b) commits a breach of regulations under Article 95C(4), where the breach is of a description specified by the Department in regulations.

(4) No complaint under this Article may be made in respect of failure to comply with provision included in regulations under Article 95C(4) because of—

- (a) Article 95D(1)(a) or (b), if provision is included in regulations under Article 95C(4) by virtue of Article 95D(1)(d), or
- (b) Article 95D(1)(c).

(5) An industrial tribunal may not consider a complaint under this Article unless the complaint is presented—

- (a) before the end of the period of three months beginning with the relevant date, or
- (b) within any further period that the tribunal considers reasonable, if the tribunal is satisfied that it was not reasonably practicable for

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the complaint to be presented before the end of that period of three months.

- (6) The relevant date is—
- (a) in the case of a complaint permitted by paragraph (3)(a), the date on which the employee is notified of the decision on the appeal;
 - (b) in the case of a complaint permitted by paragraph (3)(b), the date on which the breach was committed.

Remedies

95G.—(1) If an industrial tribunal finds a complaint under Article 95F well-founded it must make a declaration to that effect and may—

- (a) make an order for reconsideration of the Article 95A application;
- (b) make an award of compensation to be paid by the employer to the employee.

(2) The amount of any compensation must be the amount the tribunal considers just and equitable in all the circumstances, but must not exceed the permitted maximum.

(3) The permitted maximum is the number of weeks' pay specified by the Department in regulations.

(4) If an industrial tribunal makes an order under paragraph (1)(a), Article 95C and regulations under that Article apply as if the application had been received on the date of the order (instead of on the date it was actually received).”.

PART 2

RELATED AMENDMENTS TO EMPLOYMENT LAW

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

1 In Article 2(2) (definitions) at the appropriate place insert—

““Article 95A application” has the meaning given by Article 95A(2);”.

2 In Article 21 (how to calculate a week's pay in relation to rights during employment) after paragraph (4A) insert—

“(4B) Where the calculation is for the purposes of Article 95G, the calculation date is the day on which the Article 95A application was made.”.

3 In Article 23(1) (maximum amount of week's pay) before paragraph (za) insert—

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“(zza) an award of compensation under Article 95G(1)(b),”.

4 After Article 70E (protection from suffering detriment in employment: flexible working) insert—

“Study and training

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

- (a) made (or proposed to make) an Article 95A application,
- (b) exercised (or proposed to exercise) a right conferred on the employee under Article 95C,
- (c) brought proceedings against the employer under Article 95F, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

(2) This Article does not apply if the detriment in question amounts to dismissal within the meaning of Part 11.”.

5 In Article 71 (right to present complaint of detriment to industrial tribunal), in paragraph (1) for “or 70E” substitute “ , 70E or 70F ”.

6 After Article 135D (unfair dismissal: pension enrolment) insert—

“Study and training

135E An employee who is dismissed is to 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) made (or proposed to make) an Article 95A application,
- (b) exercised (or proposed to exercise) a right conferred on the employee under Article 95C,
- (c) brought proceedings against the employer under Article 95F, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.”.

7 In Article 137 (unfair dismissal: redundancy), after paragraph (6C) insert—

“(6D) 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 135E.”.

8 In Article 140(3) (exceptions to one year qualifying period of continuous employment for claims for unfair dismissal), after sub-paragraph (fi) insert—

“(fj) Article 135E applies,”.

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9 In Article 143(2) (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action) after sub-paragraph (dd) insert—

“(ddd) Article 135E applies;”.

10 In Article 144(2) (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (1) of that Article), after sub-paragraph (dd) insert—

“(ddd) Article 135E applies;”.

11 In Article 242 (mariners)—

(a) in paragraph (2), before “VIII” insert “ 7A, ”;

(b) in paragraph (8)(d), before “VIII” insert “ 7A, ”.

12 In Article 251(1A) (regulations subject to confirmatory Assembly procedure), after “70C,” insert “ 95A, 95C(7), ”.

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

13 In Article 20 (conciliation), in paragraph (1)(c) after paragraph (vi) insert—
“(via) Article 95C(4), (5) or (6) or 95F(1)(b),”.

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