
STATUTORY INSTRUMENTS

1976 No. 2147 (N.I. 28)

NORTHERN IRELAND

**The Industrial Relations (No. 2)
(Northern Ireland) Order 1976**

Made - - - - - 15th December 1976

Laid before Parliament in draft

Coming into operation on days to be appointed under Article 1

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At the Court at Buckingham Palace, the 15th day of December 1976

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), and of all other powers

(a) 1974 c. 28.

enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Industrial Relations (No. 2) (Northern Ireland) Order 1976 and shall come into operation on such day or days as the Head of the Department of Manpower Services may by order appoint.

(2) This Order shall be construed as one with the Industrial Relations (Northern Ireland) Order 1976 (a) and that Order and this Order may be cited together as the Industrial Relations (Northern Ireland) Orders 1976.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (b) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“business” includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporate;

“guarantee payment” has the meaning assigned to it by Article 3;

“the Industrial Court” means the Industrial Court constituted under Part I of the Industrial Courts Act 1919 (c);

“maternity pay” has the meaning assigned to it by Article 15;

“the Maternity Pay Fund” has the meaning assigned to it by Article 19;

“the No. 1 Order” means the Industrial Relations (Northern Ireland) Order 1976;

“recognition”, in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining.

(3) Without prejudice to the generality of Article 1 (2), the provisions of Articles 2 (2) to (9) and 3 of the No. 1 Order, in so far as those provisions relate to the definition or interpretation of words or expressions used in the No. 1 Order and in this Order, shall apply for the purposes of this Order as they apply for the purposes of the No. 1 Order.

(4) The provisions of Schedule 1 to the Act of 1965 (computation of period of employment) and, so far as they modify that Schedule, the provisions of any order for the time being in force under section 7 of that Act and any regulations for the time being in force under Article 68 (4) of the No. 1 Order shall have effect for the purposes of this Order in determining for what period an employee has been continuously employed; and for the purposes of any proceedings brought under or by virtue of this Order, a person’s employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

PART II
RIGHTS OF EMPLOYEES

Guarantee payments

Right to guarantee payment

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

(a) S.I. 1976/1043 (N.I. 16).

(b) 1954 c. 33 (N.I.).

(c) 1919 c. 69.

- (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,

he shall, subject to the following provisions of this Order, be entitled to be paid by his employer a payment, referred to in this Order as a guarantee payment, in respect of that day and hereafter in this Article and in Article 6—

- (i) such a day is referred to as a "workless day", and
- (ii) "workless period" has a corresponding meaning.

(2) In this Article and Articles 4 to 7 "day" means the period of 24 hours from midnight to midnight, and where a period of employment begun on any day extends over midnight into the following day, or would normally so extend, then—

- (a) if the employment before midnight is, or would normally be, of longer duration than that after midnight, that period of employment shall be treated as falling wholly on the first day; and
- (b) in any other case, that period of employment shall be treated as falling wholly on the second day.

(3) An employee shall not be entitled to a guarantee payment in respect of a workless day unless he has been continuously employed for a period of four weeks ending with the last complete week before that day.

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

- (a) the failure to provide him with work occurs in consequence of a trade dispute involving any employee of his employer or of an associated employer;
- (b) his employer has offered to provide alternative work for that day which is suitable in all the circumstances, whether or not work which the employee is under his contract employed to perform, and the employee has unreasonably refused that offer; or
- (c) 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

4.—(1) Subject to the limits set by Article 5, the amount of a guarantee payment payable to an employee in respect of any day shall be the sum produced by multiplying the number of normal working hours on that day by the guaranteed hourly rate, and accordingly no guarantee payment shall be payable to an employee in whose case there are no normal working hours on the day in question.

(2) Subject to paragraph (4), the guaranteed hourly rate in relation to an employee shall be the amount of one week's pay divided by—

- (a) 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; or
- (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by 12 the total number of the employee's normal working

- hours during the period of 12 weeks ending with the last complete week before the day in respect of which the guarantee payment is payable; or
- (c) in a case falling within sub-paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that sub-paragraph a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances, that is to say,—
- (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract;
 - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.

(3) For the purposes of Part II of Schedule 2 to the No. 1 Order as it applies for the calculation of a week's pay for the purposes of this Article the calculation date is, subject to paragraph (4), the day in respect of which the guarantee payment is payable.

(4) 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) shall have effect as if for the references in those paragraphs 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.

(5) In this Article and Article 5 "week", in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, means a week ending with that other day, and in relation to other employees, means a week ending with Saturday.

Limits on amount of and entitlement to guarantee payment

5.—(1) The amount of guarantee payment payable to an employee in respect of any day shall not exceed £6.

(2) An employee shall not be entitled to guarantee payments in respect of more than the specified number of days in any one of the relevant periods, that is to say, the periods of three months commencing on 1st February, 1st May, 1st August and 1st November in each year.

(3) The specified number of days for the purposes of paragraph (2) shall be, subject to paragraph (4),—

- (a) 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; or
- (b) where that number of days varies from week to week or over a longer period, the average number of such days, not exceeding five, calculated by dividing by 12 the total number of such days during the period of 12 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
- (c) in a case falling within sub-paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that sub-paragraph, 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 following considerations as are appropriate in the circumstances, that is to say,—

- (i) the average number of normal working days in a week which the employee could expect in accordance with the terms of his contract;
- (ii) the average number of such days of other employees engaged in relevant comparable employment with the same employer.

(4) 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, paragraph (3) shall 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.

(5) The Department may by order at any time vary any of the limits referred to in this Article and may in particular vary the relevant periods referred to in paragraph (2).

Supplementary

6.—(1) Subject to paragraph (2), a right to a guarantee payment shall not affect any right of an employee in relation to remuneration under his contract of employment (hereafter in this Article referred to as "contractual remuneration").

(2) Any contractual remuneration paid to an employee in respect of a workless day shall go 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 shall go 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.

(4) The Department may by order provide that in relation to any description of employees the provisions of Articles 3 (2), 4 and 5 (3), as originally enacted or as varied under Article 5 (5), and of paragraphs (1) to (3), and, so far as they apply for the purposes of those provisions, the provisions of Schedule 2 to the No. 1 Order shall have effect subject to such modifications and adaptations as may be prescribed by the order.

Complaint to industrial tribunal

7.—(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 entertain a complaint relating to a guarantee payment in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day or 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 the 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 complainant the amount of guarantee payment which it finds is due to him.

Exemption orders

8.—(1) If at any time there is in force a collective agreement, or a wages order whereby employees to whom the agreement or order relates have a right to guaranteed remuneration and on the application of all the parties to the agreement, or as the case may be, of the wages council on whose proposal the order was made 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 3 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 paragraph (1) a wages order means an order made under either of the following provisions, that is to say—

- (a) section 10 of the Wages Councils Act (Northern Ireland) 1945 (a);
- (b) section 2 of the Agricultural Wages (Regulation) Act (Northern Ireland) 1939 (b).

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

- (a) as respects a collective agreement or such an order as is referred to in paragraph (2) (a), the Department;
- (b) as respects such an order as is referred to in paragraph (2) (b), 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 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
- (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;

and where an order under this Article is in force in respect of such an agreement as is described in sub-paragraph (b) an industrial tribunal shall have jurisdiction over such a complaint as if it were a complaint falling within Article 7.

(5) An order under this Article may be varied or revoked by a subsequent order thereunder, whether in pursuance of an application made by all or any of the parties to the agreement in question, or, as the case may be, by the council or Board referred to in paragraph (1) in relation to the order in question, or without any such application.

Suspension from work on medical grounds

Right to remuneration on suspension on medical grounds

9.—(1) An employee who is suspended from work by his employer on

(a) 1945 c. 21 (N.I.).

(b) 1939 c. 25 (N.I.).

medical grounds in consequence of any requirement imposed by or under any statutory provision which is for the time being specified in Schedule 1 shall, subject to the following provisions of this Order, be entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding 26 weeks.

(2) For the purposes of this Article and Articles 10 to 13 an employee shall be regarded as suspended from work only if, and so long as, he continues to be employed by his employer, but is not provided with work or does not perform the work he normally performed before the suspension.

(3) The Department may by order add provisions to or remove provisions from the list of specified provisions in Schedule 1.

(4) If an employee is dismissed by reason of any such requirement as is referred to in paragraph (1), Article 24 (1) (a) of the No. 1 Order (qualifying period for right not to be unfairly dismissed) shall have effect in relation to that dismissal as if for the reference to 26 weeks (or 52 weeks, as the case may be) there were substituted a reference to 4 weeks.

General exclusions from right under Article 9

10.—(1) An employee shall not be entitled to remuneration under Article 9 unless he has been continuously employed for a period of four weeks ending with the last complete week before the day on which the suspension begins.

(2) An employee shall not be entitled to remuneration under Article 9 in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.

(3) An employee shall not be entitled to remuneration under Article 9 in respect of any period during which—

- (a) his employer has offered to provide him with suitable alternative work, whether or not 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.

Calculation of remuneration

11.—(1) The amount of remuneration payable by an employer to an employee under Article 9 shall be a week's pay in respect of each week of the period of suspension referred to in paragraph (1) of that Article, and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.

(2) For the purposes of Part II of Schedule 2 to the No. 1 Order as it applies for the calculation of a week's pay for the purposes of this Article the calculation date is the day before that on which the suspension begins.

(3) Subject to paragraph (4), a right to remuneration under Article 9 shall not affect any right of an employee in relation to remuneration under his contract of employment (hereafter in this Article referred to as "contractual remuneration").

(4) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under Article 9 in respect of that period, and conversely any payment of

remuneration in discharge of an employer's liability under Article 9 in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

(5) In this Article "week", in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday means a week ending with that other day, and in relation to any other employee means a week ending on Saturday.

Complaint to industrial tribunal

12.—(1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of remuneration to which the employee is entitled under Article 9.

(2) An industrial tribunal shall not entertain a complaint relating to remuneration under Article 9 in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, or 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 the 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 complainant the amount of remuneration which it finds is due to him.

Dismissal of replacement

13. Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as is referred to in Article 9 (1) of another employee; and
- (b) dismisses the first mentioned employee in order to make it possible to allow the other employee to resume his original work;

then, for the purposes of Article 22 (1) (b) of the No. 1 Order (employer to show substantial reason for dismissal), but without prejudice to the application of Article 22 (10) of that Order (whether dismissal fair or unfair to depend on whether employer acted reasonably), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

Maternity

Dismissal on grounds of pregnancy

14.—(1) An employee shall be treated for the purposes of the No. 1 Order as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is any other reason connected with her pregnancy, except one of the following reasons—

- (a) that at the effective date of termination she is or will have become, because of her pregnancy, incapable of adequately doing the work which she is employed to do;
- (b) that, because of her pregnancy, she cannot or will not be able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under any statutory provision.

(2) An employee shall be treated for the purposes of the No. 1 Order as unfairly dismissed if her employer dismisses her for a reason mentioned in paragraph (1) (a) or (b), but neither he nor any successor of his, where there is a suitable available vacancy, makes her an offer before or on the effective date of termination to engage her under a new contract of employment complying with paragraph (3).

(3) The new contract of employment must—

(a) take effect immediately on the ending of employment under the previous contract, or, where that employment ends on a Friday, Saturday or Sunday, on or before the next Monday after that Friday, Saturday or Sunday;

(b) be such 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

(c) be such that the provisions of the new 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 the corresponding provisions of the previous contract.

(4) On a complaint of unfair dismissal on the ground of failure to offer to engage an employee as mentioned in paragraph (2), it shall be for the employer to show that he or a successor made an offer to engage her in compliance with paragraphs (2) and (3) or, as the case may be, that there was no suitable available vacancy for her.

(5) Article 21 (3) of the No. 1 Order (employee treated as dismissed where he gives notice to the employer within the period of the employer's notice) shall not apply in a case where an employer gives notice to an employee to terminate her contract of employment for a reason mentioned in paragraph (1) (a) or (b).

(6) In Article 25 of the No. 1 Order (exclusion of certain fixed term contracts) as it applies to an employee treated as unfairly dismissed by virtue of paragraph (1) or (2), for the reference to the coming into operation of that Article there shall be substituted a reference to the coming into operation of this Article.

(7) Article 26 (3) of the No. 1 Order (exclusion of right not to be unfairly dismissed and remedy for breach of that right where a dismissal procedures agreement is in force) shall not apply to the right not to be unfairly dismissed for any reason mentioned in paragraph (1) or (2).

Rights of employee in connection with pregnancy and confinement

15.—(1) An employee who is absent from work wholly or partly because of pregnancy or confinement shall, subject to the following provisions of this Order, be entitled—

(a) in accordance with Articles 16 to 18, to be paid by her employer a sum to be known as maternity pay; and

(b) in accordance with Articles 28 to 30 and Schedule 2, to return to work.

(2) An employee shall be entitled to the rights referred to in paragraph (1) whether or not a contract of employment subsists during the period of her absence but, subject to paragraph (3), she shall not be so entitled unless—

(a) she continues to be employed by her employer (whether or not she is at work) until immediately before the beginning of the 11th week before the expected week of confinement;

- (b) she has at the beginning of that 11th week been continuously employed for a period of not less than two years; and
- (c) she informs her employer (in writing if he so requests) at least three weeks before her absence begins or, if that is not reasonably practicable, as soon as reasonably practicable,—
 - (i) that she will be (or is) absent from work wholly or partly because of pregnancy or confinement, and
 - (ii) in the case of the right to return, that she intends to return to work with her employer.

(3) An employee who has been dismissed by her employer for a reason falling within Article 14 (1) (a) or (b) and has not been re-engaged in accordance with that Article shall be entitled to the rights referred to in paragraph (1) notwithstanding that she has thereby ceased to be employed before the beginning of the 11th week before the expected week of confinement if, but for that dismissal, she would at the beginning of that 11th week have been continuously employed for a period of not less than two years, but she shall not be entitled to the right to return unless she informs her employer (in writing if he so requests), before or as soon as reasonably practicable after the dismissal takes effect, that she intends to return to work with him.

(4) An employee shall not be entitled to either of the rights referred to in paragraph (1) unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a certified midwife stating the expected week of her confinement.

(5) The Department may by order vary the periods of two years referred to in paragraphs (2) and (3), or those periods as varied from time to time under this Article.

Maternity pay

16.—(1) Maternity pay shall be paid in respect of a period not exceeding, or periods not exceeding in the aggregate, six weeks during which the employee is absent from work wholly or partly because of pregnancy or confinement (hereafter in this Article and Articles 17 and 18 referred to as the payment period or payment periods).

(2) An employee shall not be entitled to maternity pay for any absence before the beginning of the 11th week before the expected week of confinement, and her payment period or payment periods shall be the first six weeks of absence starting on or falling after the beginning of that 11th week.

(3) The Department may by order vary the periods of six weeks referred to in paragraphs (1) and (2) or those periods as varied from time to time under this Article.

(4) Where an employee gives her employer the information required by Article 15 (2) (c) or produces any certificate requested under Article 15 (4) after the beginning of the payment period or the first of the payment periods, she shall not be entitled to maternity pay for any part of that period until she gives him that information or certificate, but on giving him the information or as the case may be producing the certificate, she shall be entitled to be paid in respect of that part of the period or periods which fell before the giving of the information or the production of the certificate.

Calculation of maternity pay

17.—(1) The amount of maternity pay to which an employee is entitled as respects any week shall be 9/10ths of a week's pay reduced by the amount of maternity allowance payable for that week under Part I of Schedule 4 to the Social Security (Northern Ireland) Act 1975 (a) whether or not the employee in question is entitled to the whole or any part of that allowance.

(2) Maternity pay shall accrue due to an employee from day to day and in calculating the amount of maternity pay payable for any day—

(a) there shall be disregarded Sunday or such other day in each week as may be prescribed in relation to that employee under section 22 (10) of the Social Security (Northern Ireland) Act 1975 for the purpose of calculating the daily rate of maternity allowance under that Act; and

(b) the amount payable for any other day shall be taken as 1/6th of the amount of the maternity pay for the week in which the day falls.

(3) Subject to paragraph (4), a right to maternity pay shall not affect any right of an employee in relation to remuneration under any contract of employment (hereafter in this Article referred to as "contractual remuneration").

(4) Any contractual remuneration paid to an employee in respect of a day within a payment period shall go towards discharging any liability of the employer to pay maternity pay in respect of that day, and conversely any maternity pay paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.

(5) For the purposes of Part II of Schedule 2 to the No. 1 Order as it applies for the calculation of a week's pay for the purposes of this Article, the calculation date is the last day on which the employee worked under the contract of employment in force immediately before the beginning of her absence.

Complaint to industrial tribunal of failure to pay maternity pay

18.—(1) A complaint may be presented to an industrial tribunal by an employee against her employer that he has failed to pay her the whole or any part of the maternity pay to which she is entitled.

(2) An industrial tribunal shall not entertain a complaint under paragraph (1) unless it is presented to the tribunal before the end of the period of three months beginning with the last day of the payment period or, as the case may be, the last of the payment periods, or 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 the 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 complainant the amount of maternity pay which it finds is due to her.

The Northern Ireland Maternity Pay Fund

19.—(1) There shall be established under the control and management of the Department a fund to be called the Northern Ireland Maternity Pay Fund (in this Order referred to as "the Maternity Pay Fund") out of which payments shall be made in accordance with the following provisions of this Order.

(2) The Department shall prepare accounts of the Maternity Pay Fund in such form as the Department of Finance may direct and shall send them to

(a) 1975 c. 15.

the Comptroller and Auditor General not later than the end of the month of November following the end of the financial year to which the accounts relate; and the Comptroller and Auditor General shall examine and certify every such account and shall lay copies thereof, together with his report thereon, before the Assembly.

(3) Any money in the Maternity Pay Fund may from time to time be paid over to the Department of Finance and invested by that Department in any such manner as may be specified by an order of the Treasury for the time being in force under section 22 (1) of the National Savings Bank Act 1971 (a).

Financing of Maternity Pay Fund

20.—(1) In sections 1 (5) and 128 of the Social Security (Northern Ireland) Act 1975 for the words “appropriate allocation to the Redundancy Fund”, wherever they occur, there shall be substituted the words “appropriate employment protection allocation”.

(2) In section 1 (1) of that Act (outline of contributory system), after the words “Redundancy Fund” there shall be inserted the words “and the Maternity Pay Fund”.

(3) In section 128 of that Act (destination of contributions etc.)—

(a) in subsection (4), for the words “0.2 per cent.” there shall be substituted the words “0.25 per cent.”; and

(b) in subsection (5) (b), for the words “that Fund” there shall be substituted the words “the Redundancy Fund and the Maternity Pay Fund in such shares as the Department of Manpower Services may, with the consent of the Department of Finance, determine”.

(4) In Schedule 17 to that Act (glossary of expressions), at the appropriate place in alphabetical order there shall be inserted the following entries:—

Appropriate employment protection allocation.

See section 128 (4).

The Maternity Pay Fund.

The Northern Ireland Maternity Pay Fund.

Advances out of Consolidated Fund

21.—(1) Subject to the provisions of paragraphs (2) to (4), the Department of Finance may from time to time advance out of the Consolidated Fund to the Department, for the purposes of the Maternity Pay Fund, such sums as the Department may request; and any sums advanced to the Department under this Article shall be paid into that Fund.

(2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Department under this Article shall not at any time exceed £250,000.

(3) The Department of Finance may, for the purpose of providing any sums to be advanced under this Article out of the Consolidated Fund or any part of such sums, or of providing for the replacement of sums so advanced, borrow money.

(4) Any sums advanced to the Department under this Article shall be re-paid by the Department out of the Maternity Pay Fund into the Consolidated

(a) 1971 c. 29.

Fund in such manner and at such times, and with interest thereon at such rate, as the Department of Finance may direct.

Maternity pay rebate

22.—(1) Subject to any regulations made under this Article, the Department shall pay out of the Maternity Pay Fund to every employer who makes a claim under this Article and who, being liable to pay, has paid maternity pay to an employee, an amount equal to the full amount of maternity pay so paid (in this Article and Articles 25 and 26 referred to as a “rebate”).

(2) The Department may if it thinks fit, and if it is satisfied that it would be just and equitable to do so having regard to all the relevant circumstances, pay such a rebate to an employer who makes a claim under this Article and who has paid maternity pay to an employee in circumstances in which, by reason of the time limit provided for in Article 18 (2), a complaint by the employee has been dismissed, or would not be entertained, by an industrial tribunal.

(3) For the purposes of paragraphs (1) and (2), a payment of contractual remuneration by an employer shall be treated as a payment of maternity pay to the extent that, by virtue of Article 17 (4)—

- (a) it extinguishes the employer’s liability to pay maternity pay; or
- (b) in a case falling within paragraph (2), it would extinguish that liability if a complaint by the employee were not time-barred as described in that paragraph.

(4) The Department shall make provision by regulations as to the making of claims for rebates under this Article and such regulations may in particular—

- (a) require a claim to be made within such time limit as may be prescribed; and
- (b) require a claim to be supported by such evidence as may be prescribed.

Payments to employees out of Maternity Pay Fund

23.—(1) Where an employee claims that her employer is liable to pay her maternity pay and—

- (a) that she has taken all reasonable steps (other than proceedings to enforce a tribunal award) to recover payment from the employer; or
- (b) that her employer is insolvent (as defined in Article 47 of the No. 1 Order for the purposes of Articles 42 to 46 of that Order);

and that the whole or part of the maternity pay remains unpaid, the employee may apply to the Department under this Article.

(2) If the Department is satisfied that the claim is well-founded the Department shall pay the employee out of the Maternity Pay Fund the amount of the maternity pay which appears to the Department to be unpaid.

(3) A payment made by the Department to an employee under this Article shall be treated for the purpose of discharging any liability of the employer to the employee as if it had been made by the employer.

Unreasonable default by employer

24.—(1) Where the Department makes a payment to an employee in respect of unpaid maternity pay in a case falling within Article 23 (1) (a) and it appears to the Department that the employer’s default in payment was without reason-

able excuse, the Department may recover from the employer such amount as the Department considers appropriate, not exceeding the amount of maternity pay which the employer failed to pay.

(2) Where a sum is recovered by the Department by virtue of this Article that sum shall be paid into the Maternity Pay Fund.

Supplementary provisions in relation to employer's insolvency

25.—(1) Where the Department makes a payment to an employee under Article 42 of the No. 1 Order (which provides for payments out of the Redundancy Fund in respect of certain debts where an employer is insolvent) and that payment, in whole or in part, represents arrears of pay, then, in ascertaining for the purpose of Article 23 the amount of any unpaid maternity pay, Article 17 (4) shall apply as if the arrears of pay in question had been duly paid by the employer to the employee in accordance with the contract of employment.

(2) Where the Department makes a payment to an employee out of the Redundancy Fund under Article 42 of the No. 1 Order which, if it had been made by the employer to the employee, would have attracted a rebate from the Maternity Pay Fund in accordance with Article 22, then, the Department shall make a payment out of the Maternity Pay Fund into the Redundancy Fund of an amount corresponding to the amount of rebate which would have been so payable.

Complaint and appeals to industrial tribunal

26.—(1) A person who has—

- (a) made a claim for a rebate under Article 22, in a case to which paragraph (1) of that Article applies; or
- (b) applied for a payment under Article 23,

may, subject to paragraph (5), present a complaint to an industrial tribunal that—

- (i) the Department has failed to make any such payment; or
- (ii) any such payment made by the Department is less than the amount which should have been paid.

(2) Where an industrial tribunal finds that the Department ought to make any such payment or further payment, it shall make a declaration to that effect and shall also declare the amount of any such payment which it finds the Department ought to make.

(3) An employer who has made a claim for a rebate under Article 22, in a case to which paragraph (2) of that Article applies, may, subject to paragraph (5), appeal to an industrial tribunal on the ground that—

- (a) the Department has refused to pay a rebate; or
- (b) any rebate paid by the Department is less than the amount which should have been paid,

and if on any such appeal the tribunal is satisfied that it is just and equitable having regard to all the relevant circumstances that a rebate should be paid or, as the case may be, finds that a further payment by way of rebate should be made, the tribunal shall determine accordingly, and the Department shall comply with the determination.

(4) Where the Department determines that an amount is recoverable from an employer under Article 24, the employer may, subject to paragraph (5), appeal to an industrial tribunal; and if on any such appeal the tribunal is satisfied that no amount should be recovered from the employer, or that a lesser or greater amount should be recovered (but in any case not exceeding the amount of maternity pay which the employer failed to pay) the tribunal shall determine accordingly and the amount, if any, so determined shall be the amount recoverable from the employer by the Department.

(5) An industrial tribunal shall not entertain a complaint or appeal under this Article unless it is presented to the tribunal within the period of three months beginning with the date on which the relevant decision of the Department was communicated to the complainant or appellant or 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 or appeal to be presented within the period of three months.

Provisions as to information

27.—(1) Where an application is made to the Department by an employee under Article 23, the Department may require—

- (a) the employer to provide it with such information as the Department may reasonably require for the purpose of determining whether the employee's 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 shall be made by a notice in writing given to the person on whom the requirement is imposed and 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 shall be liable on summary conviction to a fine not exceeding £100.

(4) If any person in making a claim under Article 22 or an application under Article 23 or in purporting to comply with a requirement of a notice under this Article knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.

Right to return to work

28.—(1) The right to return to work of an employee who has been absent from work wholly or partly because of pregnancy or confinement is, subject to the following provisions of this Order, a right to return to work with her original employer, or, where appropriate, his successor, at any time before the end of the period of 29 weeks beginning with the week in which the date of confinement falls, in the job in which she was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent.

(2) In paragraph (1)—

- (a) "job", in relation to an employee, means the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed; and

(b) "terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent" means, as regards seniority, pension rights and other similar rights, that the period or periods of employment prior to the employee's absence shall be regarded as continuous with her employment following that absence.

(3) In Articles 15 and 29 to 31 and Schedule 2 "to return to work" means to return to work in accordance with paragraph (1) and cognate expressions shall be construed accordingly.

(4) If an employee is entitled to return to work in accordance with paragraph (1), but it is not practicable by reason of redundancy for the employer to permit her so to return to work, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with paragraph (5).

(5) The new contract of employment must be such that—

(a) 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) the provisions of the new 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 in accordance with paragraph (1).

(6) The remedies of an employee for infringement of either of the rights mentioned in this Article are those conferred by or by virtue of the provisions of Articles 29 and 30 and Schedule 2.

Exercise of right to return

29.—(1) An employee shall exercise her right to return to work by notifying the employer (who may be her original employer or a successor of that employer) at least one week before the day on which she proposes to return of her proposal to return on that day (hereafter in this Article and Article 30 and Schedule 2 referred to as 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) Subject to paragraph (4), an employee may—

(a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of 29 weeks mentioned in Article 28 (1); 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 later than four weeks from the expiration of the said period of 29 weeks;

if before the notified day of return or, as the case may be, the expiration of the period of 29 weeks she gives the employer 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 the expiration of that period, as the case may be.

(4) Where an employee has once exercised a right of postponement or extension under paragraph (3) (a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that paragraph in connection with the same return to work.

(5) 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 thereafter.

(6) If no day of return has been notified and 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 expiration of the period of 29 weeks referred to in Article 28 (1), or which appears likely to have that effect, and 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 14 days from the end of the interruption notwithstanding that she returns to work outside the said period of 29 weeks.

(7) Where the employee has either—

(a) exercised the right under paragraph (3) (b) to extend the period during which she may exercise her right to return; or

(b) refrained from notifying the day of return in the circumstances described in paragraph (6),

the other of those paragraphs shall apply as if for the reference to the expiration of the period of 29 weeks there were substituted a reference to the expiration of the further period of four weeks or, as the case may be, of the period of 14 days from the end of the interruption of work.

(8) Where—

(a) an employee's return is postponed under paragraph (2) or (3) (a), or

(b) the employee returns to work on a day later than the notified day of return in the circumstances described in paragraph (5),

then, subject to paragraph (4), references in those paragraphs and in Article 30 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or, as the case may be, that later day.

Failure to permit to return treated as dismissal

30.—(1) Where an employee is entitled to return to work and has exercised her right to return in accordance with Article 29 but is not permitted to return to work, then, she shall be treated for the purposes of—

(a) the provisions of the No. 1 Order relating to unfair dismissal, and

(b) the provisions of the Act of 1965 relating to redundancy,

as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

(2) The provisions of Schedule 2 shall have effect for the purpose of supplementing the foregoing provisions of this Order relating to an employee's right to return to work.

Dismissal of replacement

31. Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the return to work of another employee who is, or will be, absent wholly or partly because of pregnancy or confinement; and
- (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee;

then, for the purposes of Article 22 (1) (b) of the No. 1 Order (employer to show substantial reason for dismissal), but without prejudice to the application of Article 22 (10) of that Order (whether dismissal fair or unfair to depend on whether employer acted reasonably), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

Interpretation of Articles 15 to 31

32. In Articles 15 to 31, this Article and Schedule 2—

- “certified midwife” means a midwife certified under the Nurses and Midwives Act (Northern Ireland) 1970 (a);
- “confinement” means the birth of a living child or the birth of a child whether living or dead after 28 weeks of pregnancy;
- “expected week of confinement” means the week in which it is expected that confinement will take place;
- “original contract of employment”, in relation to an employee who is absent from work wholly or partly because of pregnancy or confinement, means the contract under which she worked immediately before the beginning of her absence or, if she entered into that contract during her pregnancy by virtue of Article 14 (2) or otherwise by reason of her pregnancy, the contract under which she was employed immediately before she entered into the later contract or, if there was more than one later contract, the first of the later contracts;
- “week”—
 - (a) in Articles 15 (2) (c) and 29 (1), means a period of seven days;
 - (b) in the expression “expected week of confinement”, means a period of seven days beginning with midnight between Saturday and Sunday; and
 - (c) in any other case, 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.

Trade union membership and activities

Trade union membership and activities

33.—(1) Subject to the following provisions of this Article, every employee shall have 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; or

(a) 1970 c. 11 (N.I.).

- (b) preventing or deterring him from taking part in the activities of an independent trade union at any appropriate time, or penalising him for doing so; or
- (c) compelling him to be or become a member of a trade union which is not independent.

(2) In this Article “appropriate time”, in relation to an employee taking part in any activities of a trade union, means time which either—

- (a) is outside his working hours, or
- (b) is 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 those activities;

and in this paragraph “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) The provisions of paragraph (4) shall have effect in relation to an employee—

- (a) of the same class as employees for whom it is the practice in accordance with a union membership agreement to belong to a specified independent trade union or to one of a number of specified independent trade unions; or
- (b) not of the same class as described in sub-paragraph (a) but of the same grade or category as such employees as are referred to in that sub-paragraph.

(4) In relation to such an employee the right conferred by paragraph (1) (b) in relation to the activities of an independent trade union shall extend to activities on the employer’s premises only if that union is a specified union.

(5) For the purposes of this Article a trade union—

- (a) shall be taken to be specified for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified; and
- (b) shall also be treated as so specified if—
 - (i) the Agency has made a recommendation under Article 7 of the No. 1 Order for recognition of that union covering the employee in question; or
 - (ii) the Agency is exercising, or has been requested to exercise, its powers under Article 7 of the No. 1 Order in relation to a dispute relating to or connected with recognition of that union covering that employee and the dispute has not been settled or otherwise disposed of by the Agency under that Article.

(6) An employee who genuinely objects on grounds of religious belief to being a member of any trade union whatsoever shall have the right not to have action (short of dismissal) taken against him by his employer for the purpose of compelling him to belong to a trade union.

(7) In this Article references to a trade union include references to a branch or section of a trade union.

Complaint to industrial tribunal

34.—(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 33.

(2) An industrial tribunal shall not entertain a complaint under paragraph (1) unless it is presented to the tribunal before the end of the period of three months beginning with the date on which there occurred the action complained of, or where that action is part of a series of similar actions, the last of those actions, or 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 the period of three months.

(3) Where the tribunal finds the complaint well-founded it shall make a declaration to that effect and may make an award of compensation, calculated in accordance with Article 36, to be paid by the employer to the employee in respect of the action complained of.

Supplementary

35.—(1) On a complaint under Article 34 it shall be for the employer to show—

- (a) the purpose for which action was taken against the complainant; and
- (b) that the purpose was not such a purpose as is referred to in Article 33 (1) (a) to (c) or (6).

(2) In determining, on a complaint under Article 34, any question as to whether action was taken by the complainant's employer or the purpose for which it was taken, 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 take the action complained of, and that question shall be determined as if no such pressure had been exercised.

(3) If on a complaint under Article 34 it is shown that the action complained of was taken for the purpose of safeguarding national security or protecting public safety or public order, the industrial tribunal shall dismiss the complaint.

(4) A certificate signed by or on behalf of the Secretary of State, and certifying that the action specified in the certificate was taken for the purpose of safeguarding national security or protecting public safety or public order shall for the purposes of this Article be conclusive evidence of that fact; and a document purporting to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

Assessment of compensation on complaint under Article 34

36.—(1) The amount of the compensation awarded by a tribunal on a complaint under Article 34 shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under Article 33 by the employer's action complained of and to any loss sustained by the complainant which is attributable to that action.

(2) The said 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.

(3) In ascertaining the said 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.

(4) In determining the amount of compensation to be awarded under paragraph (1) no account shall be taken of any pressure as is referred to in Article 35 (2), and that question shall be determined as if no such pressure had been exercised.

(5) Where the tribunal finds that the action complained of was to any extent caused or contributed to by any 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.

Time off work

Time off for carrying out trade union duties

37.—(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by him to take time off, subject to and in accordance with paragraph (2), during the employee's working hours for the purpose of enabling him—

- (a) to carry out those duties of his as such an official which are concerned with industrial relations between his employer and any associated employer, and their employees; or
- (b) to undergo training in aspects of industrial relations which is—
 - (i) relevant to the carrying out of those duties; and
 - (ii) 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.

(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 to any relevant provisions of a Code of Practice issued by the Agency under Article 14A of the No. 1 Order.

(3) In the Code of Practice referred to in Article 14A (2) (b) (i) of the No. 1 Order the Agency shall in particular provide practical guidance on the circumstances in which a trade union official is to be permitted to take time off under this Article in respect of duties connected with industrial action.

(4) An employer who permits an employee to take time off under this Article for any purpose shall, subject to the following provisions of this Article, pay him for the time taken off for that purpose in accordance with the permission—

- (a) 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, as if he had worked at that work for the whole of that time;
- (b) where the employee's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work.

(5) The average hourly earnings referred to in paragraph (4) (b) shall be the average hourly earnings of the employee concerned or, 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.

(6) Subject to paragraph (7), a right to be paid any amount under paragraph (4) shall not affect any right of an employee in relation to remuneration under his contract of employment (hereafter in this Article referred to as "contractual remuneration").

(7) Any contractual remuneration paid to an employee in respect of a period of time off to which paragraph (1) applies shall go towards discharging any liability of the employer under paragraph (4) in respect of that period, and conversely any payment of any amount under paragraph (4) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(8) An employee who is an official of an independent trade union recognised by his employer may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this Article or to pay him the whole or part of any amount so required to be paid.

Time off for trade union activities

38.—(1) An employer shall permit an employee of his who is a member of an appropriate trade union to take time off, subject to and in accordance with paragraph (3), during the employee's working hours for the purpose of taking part in any trade union activity to which this Article applies.

(2) In this Article "appropriate trade union", in relation to an employee of any description, means an independent trade union which is recognised by his employer in respect of that description of employee, and the trade union activities to which this Article applies are—

(a) any activities of an appropriate trade union of which the employee is a member; and

(b) any activities, whether or not falling within sub-paragraph (a), in relation to which the employee is acting as a representative of such a union,

excluding 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 14A of the No. 1 Order.

(4) In the Code of Practice referred to in Article 14A (2) (b) (ii) of the No. 1 Order the Agency shall in particular provide practical guidance on the following matters, that is to say, the question whether, and the circumstances in which a trade union member is to be permitted to take time off under this Article for trade union activities connected with industrial action.

(5) An employee who is a member of an independent trade union recognised by his employer may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this Article.

Time off for public duties

39.—(1) An employer shall permit an employee of his who is—

(a) a justice of the peace;

(b) a member of a district council;

(c) a member of any statutory tribunal;

(d) a member of a Health and Social Services Board established under

the Health and Personal Social Services (Northern Ireland) Order 1972 (a);

- (e) a member of an Education and Library Board established under the Education and Libraries (Northern Ireland) Order 1972 (b); or
- (f) a governor of the Ulster College or a member of the managing or governing body of any of the following (within the meaning of the Education and Libraries (Northern Ireland) Order 1972), namely—
 - (i) a grant aided school;
 - (ii) an institution of further education;
 - (iii) an institution which is maintained in pursuance of arrangements made by the Department of Education under Article 55 (1) of that Order of 1972, or in respect of which grants are paid by that Department under Article 55 (2) of that Order,

to take time off, subject to and in accordance with paragraph (3), during the employee's working hours for the purposes of performing any of the duties of his office or, as the case may be, his duties as such a member.

(2) For the purposes of paragraph (1) the duties of a member of a body referred to in sub-paragraphs (b) to (f) of that paragraph are:—

- (a) attendance at a meeting of the body or any of its committees or sub-committees;
- (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.

(3) 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, to the following:—

- (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 Articles 37 and 38;
 - (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (4) The Department may by order—
- (a) modify the provisions of paragraph (1) by adding any office or body to, or removing any office or body from, that paragraph or by altering the description of any office or body in that paragraph; and
 - (b) modify the provisions of paragraph (2).

(5) 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 this Article.

Provisions as to industrial tribunals

40.—(1) An industrial tribunal shall not consider—

- (a) a complaint under Article 37, 38 or 39 that an employer has failed to permit an employee to take time off; or
- (b) a complaint under Article 37 that an employer has failed to pay an employee the whole or part of any amount required to be paid under that Article;

(a) S.I. 1972/1265 (N.I. 14).

(b) S.I. 1972/1263 (N.I. 12).

unless it is presented within three months of the date when the failure occurred or 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 the period of three months.

(2) Where an industrial tribunal finds any complaint mentioned in paragraph (1) (a) well-founded the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

(3) Where on a complaint under Article 37 an industrial tribunal finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under that Article, the tribunal shall order the employer to pay the employee the amount which it finds due to him.

Time off to look for work or make arrangements for training

41.—(1) An employee who is given notice of dismissal by reason of redundancy shall, subject to the following provisions of this Article, be entitled before the expiration of his notice to be allowed by his employer reasonable time off during the employee's working hours in order to look for new employment or make arrangements for training for future employment.

(2) An employee shall not be entitled to time off under this Article unless, on whichever is the later of the following dates, that is to say—

(a) the date on which the notice is due to expire; or

(b) the date on which it would expire were it the notice required to be given by section 1 (1) of the Act of 1965 (minimum period of notice),

he will have been or, as the case may be, would have been continuously employed for a period of two years or more.

(3) An employee who is allowed time off during his working hours under paragraph (1) shall, subject to the following provisions of this Article, be entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.

(4) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—

(a) 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 notice was given; or

(b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by 12 the total number of the employee's normal working hours during the period of 12 weeks ending with the last complete week before the day on which notice was given.

(5) For the purposes of Part II of Schedule 2 to the No. 1 Order as it applies for the calculation of a week's pay for the purposes of this Article, the calculation date is the day on which the employer's notice was given.

(6) In this Article, "week" in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, means a week ending with that other day, and in relation to any other employee means a week ending with Saturday.

(7) If an employer unreasonably refuses to allow an employee time off from work under this Article, the employee shall, subject to paragraph (11), be entitled to be paid an amount equal to the remuneration to which he would have been entitled under paragraph (3) if he had been allowed the time off.

(8) An employee may present a complaint to an industrial tribunal on the ground that his employer has unreasonably refused to allow him time off under this Article or has failed to pay the whole or any part of any amount to which the employee is entitled under paragraph (3) or (7).

(9) An industrial tribunal shall not entertain a complaint under paragraph (8) unless it is presented to the tribunal within the period of three months beginning with the day on which it is alleged that the time off should have been allowed, or 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 the period of three months.

(10) If on a complaint under paragraph (8) the tribunal finds the grounds of the complaint well-founded it shall make a declaration to that effect and shall order the employer to pay to the employee the amount which it finds due to him.

(11) The amount—

(a) of an employer's liability to pay remuneration under paragraph (3); or

(b) which may be ordered by a tribunal to be paid by an employer under paragraph (7),

or, where both sub-paragraphs (a) and (b) are applicable, the aggregate amount of the liabilities referred to in those sub-paragraphs, shall not exceed, in respect of the notice period of any employee, two-fifths of a week's pay of that employee.

(12) Subject to paragraph (13), a right to any amount under paragraph (3) or (7) shall not affect any right of an employee in relation to remuneration under the contract of employment (hereafter in this Article referred to as "contractual remuneration").

(13) Any contractual remuneration paid to an employee in respect of a period when he takes time off for the purposes referred to in paragraph (1) shall go towards discharging any liability of the employer to pay remuneration under paragraph (3) in respect of that period, and conversely any payment of remuneration under paragraph (3) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Provisions supplementary to Articles 37 to 41

42. For the purposes of Articles 37 to 41—

(a) a trade union shall be treated as recognised not only if it is recognised for the purposes of collective bargaining, but also if the Agency has made a recommendation under Article 7 (1) of the No. 1 Order for recognition of that union,

(b) the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, he is required to be at work; and

(c) "normal working hours" shall be construed in accordance with Part I of Schedule 2 to the No. 1 Order.

Insolvency

Priority of certain debts on insolvency

43.—(1) An amount to which this Article applies shall be treated for the purposes of—

- (a) section 287 of the Companies Act (Northern Ireland) 1960 (a); and
- (b) section 1 of the Preferential Payments (Bankruptcies and Arrangements) Act (Northern Ireland) 1964 (b);

as if it were wages payable by the employer to the employee in respect of the period for which it is payable.

(2) This Article applies to any amount owed by an employer to an employee in respect of—

- (a) a guarantee payment;
- (b) remuneration on suspension on medical grounds under Article 9;
- (c) any payment for time off under Article 37 (4) or 41 (3);
- (d) remuneration under a protective award made under Article 51 of the No. 1 Order.

Itemised pay statement

Right to itemised pay statement

44. Every employee shall have 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 an itemised pay statement, in writing, containing the following particulars, that is to say,—

- (a) the gross amount of the wages or salary;
- (b) the amounts of any variable and, subject to Article 45, 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

45.—(1) A pay statement given in accordance with Article 44 need not contain separate particulars of a fixed deduction if it contains instead an aggregate amount of fixed deductions, including that deduction, and the employer has given to the employee, at or before the time at which that pay statement is given, a standing statement of fixed deductions, in writing, which contains the following particulars of each deduction comprised in that aggregate amount, that is to say,—

- (a) the amount of the deduction;
- (b) the intervals at which the deduction is to be made; and
- (c) the purpose for which it is made,

and which, in accordance with paragraph (4), is effective at the date on which the pay statement is given.

(2) A standing statement of fixed deductions may be amended, whether by addition of a new deduction or by a change in the particulars or cancellation of an existing deduction, by notice in writing, containing particulars of the amendment, given by the employer to the employee.

(a) 1960 c. 22 (N.I.).

(b) 1964 c. 32 (N.I.).

(3) An employer who has given to an employee a standing statement of fixed deductions shall, within the period of 12 months beginning with the date on which the first standing statement was given and at intervals of not more than 12 months thereafter, re-issue it in a consolidated form incorporating any amendments notified in accordance with paragraph (2).

(4) A standing statement of fixed deductions shall become effective, for the purposes of paragraph (1), on the date on which it is given to the employee and shall cease to have effect on the expiration of the period of 12 months beginning with that date, or, where it is re-issued in accordance with paragraph (3), the expiration of the period of 12 months beginning with the date on which it was last re-issued.

Supplementary

46. The Department may by order—

(a) vary the provisions of Articles 44 and 45 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 Article 45 (3) and (4) so as to shorten or extend the periods of 12 months referred to in those paragraphs, or those periods as varied from time to time under this Article.

Reference to industrial tribunal

47.—(1) Where an employer is required by Article 44 to give any employee a pay statement and he does not do so, the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included in a statement so as to comply with the requirements of that Article.

(2) Where a pay statement, or a standing statement of fixed deductions, purporting to comply with Article 44 or 45 (1), has been given to an employee and a question arises as to the particulars which ought to have been included in that statement so as to comply with the requirements of Article 44, or, as the case may be, Article 45 (1), either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.

(3) In this Article a question as to the particulars which ought to have been included in a statement does not include a question solely as to the accuracy of an amount stated in any such particulars.

(4) An industrial tribunal shall not entertain 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 is made before the end of the period of three months beginning with the date on which the employment ceased.

(5) Where on a reference under this Article an industrial tribunal finds that an employer has failed to give an employee any pay statement in accordance with Article 44 or 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 45 (1)—

(a) the tribunal shall make a declaration to that effect; and

(b) where the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of 13 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.

In this paragraph "unnotified deduction" means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction required by Article 44 or 45 (1).

Extension of terms and conditions

Extension of terms and conditions

48. The provisions of Schedule 3 shall have effect in place of Part I of the Terms and Conditions of Employment Act (Northern Ireland) 1963 (a) and that Part shall cease to have effect.

Excluded classes of employment

Excluded classes of employment

49.—(1) Subject to the following provisions of this Article, this Part applies to every employment.

(2) Articles 3, 9, 15, 33, 37, 38, 39, 41 and 44 do not apply to any of the following, that is to say—

- (a) any employment where the employer is the husband or wife of the employee;
- (b) any employment as master or as a member of the crew of a fishing vessel, where the employee is not remunerated otherwise than by a share in the profits or gross earnings of the vessel;
- (c) any employment where under his contract of employment the employee ordinarily works outside Northern Ireland.

(3) For the purposes of paragraph (2), a person employed to work on board a ship registered in the United Kingdom (not being a ship registered at a port outside Northern Ireland) shall, unless—

- (a) the employment is wholly outside Northern Ireland, or
- (b) he is not ordinarily resident in Northern Ireland,

be regarded as a person who under his contract ordinarily works in Northern Ireland.

(4) Articles 3 and 9 do not apply to employment under a contract for a fixed term of 12 weeks or less or to employment under a contract made in contemplation of the performance of a specific task which is not expected to last for more than 12 weeks, unless in either case the employee has been continuously employed for a period of more than 12 weeks.

(5) Subject to paragraphs (6), (7) and (8), Articles 37, 38, 39 and 44 (which confer rights which do not depend upon an employee having a qualifying period of continuous employment) do not apply to employment under a contract which normally involves employment for less than 16 hours weekly.

(6) If the employee's relations with his employer cease to be governed by a contract which normally involves work for 16 hours or more weekly and become governed by a contract which normally involves employment for 8 hours or more, but less than 16 hours, weekly, the employee shall nevertheless for

(a) 1963 c. 2 (N.I.).

a period of 26 weeks computed in accordance with paragraph (7) be treated for the purposes of paragraph (5) as if his contract normally involved employment for 16 hours or more weekly.

(7) In computing the said period of 26 weeks no account shall be taken of any week—

- (a) during which the employee is in fact employed for 16 hours or more;
- (b) during which the employee takes part in a strike, or is absent from work because of a lock-out by his employer; or
- (c) during which there is no contract of employment but which by virtue of paragraph 5 (1) of Schedule 1 to the Act of 1965, counts in computing a period of continuous employment.

(8) An employee whose relations with his employer are governed by a contract of employment which normally involves employment for 8 hours or more, but less than 16 hours, weekly shall nevertheless, if he has been continuously employed for a period of five years or more be treated for the purposes of paragraph (5) as if his contract normally involved employment for 16 hours or more weekly.

(9) Articles 39, 41 and 44 do not apply to employment as a merchant seaman.

(10) For the purposes of paragraph (9), employment as a merchant seaman 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 save as aforesaid includes employment as master or a member of the crew of any ship, as an apprentice to the sea service, and as a trainee undergoing training for the sea service, and 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 such a ship while it is in port.

(11) The Department may by order—

- (a) provide that any provision contained in this Order which is specified in the order shall not apply to persons or to employments of such classes as may be prescribed by the order;
- (b) add to, vary, revoke or exclude the operation of any of the provisions of paragraphs (1) to (10).

PART III

DISCLOSURE OF INFORMATION

General duty of employers to disclose information

50.—(1) For the purposes of all the stages of such collective bargaining between an employer and representatives of an independent trade union as is referred to in paragraph (2), it shall be the duty of the employer, subject to Article 51, to disclose to those representatives on request all such information relating to his undertaking as is in his possession, or that of any associated employer, and is both—

- (a) information without which the trade union representatives would be to a material extent impeded in carrying on with him such collective bargaining, and
- (b) information which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.

(2) The collective bargaining for the purposes of which an employer must disclose information under paragraph (1) is collective bargaining about matters, and in relation to descriptions of workers,—

(a) in respect of which the trade union is recognised by that employer; or

(b) falling within the scope of a recommendation for recognition relating to the union made by the Agency under Article 7 of the No. 1 Order, and in this Article and Articles 52 to 54 “representative”, in relation to a trade union, means an official or other person authorised by the trade union to carry on such collective bargaining.

(3) Where a request for information is made by trade union representatives under this Article, the request shall, if the employer so requests, be in writing or be confirmed in writing.

(4) In determining, for the purposes of paragraph (1) (b), what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by the Agency under Article 14A of the No. 1 Order, but not so as to exclude any other evidence of what that practice is.

(5) Where an employer is required by virtue of this Article to disclose any information to trade union representatives, the disclosure of it shall, if they so request, be in writing or be confirmed in writing.

Restrictions on general duty under Article 50

51.—(1) No employer shall, by virtue of Article 50, be required to disclose—

(a) any information the disclosure of which would be against the interests of national security, public safety or public order, or

(b) any information which he could not disclose without contravening a prohibition imposed by or under a statutory provision, or

(c) any information which has been communicated to the employer in confidence, or which the employer has otherwise obtained in consequence of the confidence reposed in him by another person, or

(d) any information relating specifically to an individual, unless he has consented to its being disclosed, or

(e) any information the disclosure of which would cause substantial injury to the employer’s undertaking for reasons other than its effect on collective bargaining, or

(f) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings;

and in formulating the provisions of any Code of Practice relating to the disclosure of information, the Agency shall have regard to the provisions of this paragraph.

(2) In the performance of his duty under Article 50 an employer shall not be required—

(a) to produce, or allow inspection of, any document (other than a document prepared for the purpose of conveying or confirming the information) or to make a copy of or extracts from any document, or

(b) to compile or assemble any information where the compilation or assembly would involve an amount of work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining.

Complaint of failure to disclose information

52.—(1) An independent trade union may refer to the Department, in writing in such form as the Department may require, a complaint that an employer has failed to disclose to representatives of that trade union information which he was required to disclose to them by Article 50, or to confirm any such information in writing in accordance with paragraph (5) of that Article.

(2) If on receipt of such a complaint the Department is of the opinion that the complaint is reasonably likely to be settled by conciliation, it shall seek to promote a settlement of the matter.

(3) Where the complaint is not settled or withdrawn and the Department is of the opinion that—

- (a) the complaint is not reasonably likely to be settled by conciliation; or
- (b) that further attempts at conciliation are unlikely to result in a settlement, the Department shall refer the complaint to the Industrial Court.

(4) The Industrial Court shall hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.

(5) On the hearing of a complaint under this Article any person who the Court considers has a proper interest in the complaint shall be entitled to be heard by the Court, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Court in those proceedings.

(6) If the Court finds the complaint wholly or partly well-founded, the declaration shall specify—

- (a) the information in respect of which the Court finds that the complaint is well-founded;
- (b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose, or, as the case may be, to confirm in writing, any of the information specified under sub-paragraph (a); and
- (c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose, or, as the case may be, to confirm in writing, the information specified under sub-paragraph (a).

(7) On a hearing of a complaint under this Article a certificate signed by or on behalf of the Secretary of State and certifying that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security, public safety or public order shall be conclusive evidence of that fact; and a document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

Further complaint arising from failure to disclose information

53.—(1) At any time after the expiration of the period specified in a declaration under Article 52 (6) (c) the trade union may refer to the Department in writing in such form as the Department may require, a complaint (hereafter in this Article and Article 54 referred to as a “further complaint”) that the employer has failed to disclose, or, as the case may be, to confirm in writing, to representatives of that union information specified in the declaration under Article 52 (6) (a).

(2) On receipt of a further complaint the Department shall refer the complaint to the Industrial Court which shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.

(3) On the hearing of a further complaint under this Article any person who the Court considers has a proper interest in the complaint shall be entitled to be heard by the Court, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Court in those proceedings.

(4) If the Court finds the further complaint wholly or partly well-founded the declaration shall specify the information in respect of which the Court finds that the complaint is well-founded.

Determination of claim and award

54.—(1) On or after referring a further complaint under Article 53, the trade union may refer to the Department, in writing, a claim in respect of one or more descriptions of employees (but not workers who are not employees) specified in the claim that their contracts should include the terms and conditions specified in the claim and the Department shall refer the claim to the Industrial Court.

(2) The right to refer a claim under paragraph (1) shall expire, or, as the case may be, a claim so referred shall be treated as withdrawn, if at any time before the Court makes an award under this Article the employer discloses, or, as the case may be, confirms in writing, to representatives of the trade union the information specified in the declaration under Article 52 (6) (a) or, as the case may be, Article 53 (4).

(3) If the Court finds, or has found, the further complaint wholly or partly well-founded, it may, after hearing the parties, make an award that in respect of any description of employees specified in the claim the employer shall, from a specified date, observe either—

- (a) the terms and conditions specified in the claim; or
- (b) other terms and conditions which the Court considers appropriate.

(4) The date specified in an award under paragraph (3) may be a date earlier than that on which the award is made but shall not be earlier than the date specified in accordance with Article 52 (6) (b) in the declaration made by the Court on the original complaint.

(5) An award under paragraph (3) shall be made only in respect of a description of employees, and shall comprise only terms and conditions relating to matters,—

- (a) in respect of which the trade union making the claim is recognised by the employer; or
- (b) which fall within the scope of a recommendation for recognition (made by the Agency under Article 7 of the No. 1 Order) relating to the trade union making the claim.

(6) Any terms and conditions which by an award under this Article the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee, as from the date specified in the award, except in so far as they are superseded or varied—

- (a) by a subsequent award under this Article;

- (b) by a collective agreement between the employer and the union for the time being representing that employee; or
- (c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.

(7) Where—

- (a) by virtue of any statutory provision, other than one contained in this Article, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that statutory provision; and
- (b) by virtue of an award under this Article any terms and conditions are to have effect as part of that contract,

that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this Article, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.

(8) No award shall be made under this Article in respect of any terms and conditions of employment which are fixed by virtue of any statutory provision.

PART IV

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Codes of Practice

55. In Part II of the No. 1 Order (constitution and functions of the Labour Relations Agency) after Article 14 there shall be inserted the following Article:—

“Codes of Practice. 14A.—(1) The Agency may issue Codes of Practice containing such practical guidance as the Agency thinks fit for the purpose of promoting the improvement of industrial relations.

(2) Without prejudice to the generality of paragraph (1), the Agency shall, in one or more Codes of Practice, provide practical guidance on the following matters in relation to the application of the following provisions of the No. 2 Order, that is to say—

- (a) the disclosure of information, in accordance with Articles 50 and 51 of that Order, by employers to trade union representatives for the purpose of collective bargaining;
- (b) the time off to be permitted by an employer—
 - (i) to a trade union official in accordance with Article 37 of that Order; and
 - (ii) to a trade union member in accordance with Article 38 of that Order.

(3) When the Agency proposes to issue a Code of Practice, it shall prepare and publish a draft of that Code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) If the Agency determines to proceed with the draft, it shall transmit the draft to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(5) In the case of a draft Code of Practice containing practical guidance on the matters referred to in paragraph (2) (a) or (b), if the draft is approved by resolution of the Assembly the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(6) In the case of a draft Code of Practice not containing such practical guidance, if, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(8) An order under paragraph (5) or (7) shall be subject to negative resolution and without prejudice to Article 80 (3), may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the Code of Practice thereby brought into operation.

(9) The Agency may from time to time revise the whole or any part of a Code of Practice issued under this Article and issue that revised Code, and paragraphs (3) to (8) shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.

(10) A failure on the part of any person to observe any provision of a Code of Practice shall not of itself render him liable to any proceedings; but in any proceedings before an industrial tribunal or the Industrial Court any Code of Practice issued under this Article shall be admissible in evidence, and if any provision of such a Code appears to the tribunal or Court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question."

General provisions as to industrial tribunals and conciliation

56.—(1) The remedy of an employee for infringement of any of the rights conferred on him by any provision of this Order shall, if provision is made for a complaint or for the reference of a question to an industrial tribunal, be by way of such complaint or reference in accordance with the relevant provisions of this Order and with tribunal regulations made under Article 59 of the No. 1 Order, and not otherwise.

(2) The provisions of paragraphs (3) to (7) shall have effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings,—

- (a) arising out of a contravention, or alleged contravention, of the following provisions of this Order that is to say, Articles 3, 9, 15, 33, 37, 38, 39, 41 and 44;
- (b) arising out of a contravention, or alleged contravention, of a provision of any other statutory provision specified by an order under paragraph (8); or

(c) which are proceedings or claims in respect of which an industrial tribunal has jurisdiction by virtue of an order under Article 57.

(3) Where a complaint has been presented to an industrial tribunal, and a copy of it has been sent to the Department, it shall be the duty of the Department—

(a) if it is requested to do so by the complainant and by the person against whom the complaint is presented, or

(b) if, in the absence of any such request, the Department considers that it could act under this paragraph with a reasonable prospect of success,

to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.

(4) Where at any time—

(a) a person claims that action has been taken in respect of which a complaint could be presented by him to an industrial tribunal, but

(b) before any complaint relating to that action has been presented by him, a request is made to the Department (whether by that person or by the person against whom the complaint could be made) to make its services available to them, the Department shall act in accordance with paragraph (3) as if a complaint has been presented to an industrial tribunal.

(5) Paragraphs (3) and (4) shall apply, with appropriate modifications, to the presentation of a claim and the reference of a question to an industrial tribunal as they apply to the presentation of a complaint.

(6) In proceeding under paragraph (3) or (4) the Department shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

(7) Anything communicated to the Department in connection with the performance of its functions under this Article shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to the Department.

(8) The Department may by order—

(a) direct that further provisions of this Order be added to the list in paragraph (2) (a);

(b) specify a provision of any other statutory provision as one to which paragraph (2) (b) applies.

Power to confer jurisdiction on industrial tribunals in respect of damages, etc., for breach of contract of employment

57.—(1) The Secretary of State may by order provide that on any claim to which this Article applies or any such claim of a description specified in the order, being in either case a claim satisfying the relevant condition or conditions mentioned in paragraph (3), proceedings for the recovery of damages or any other sum, except damages or a sum due in respect of personal injuries, may be brought before an industrial tribunal.

(2) Subject to paragraph (3), this Article applies to any of the following claims, that is to say—

(a) a claim for damages for breach of a contract of employment or any other contract connected with employment;

(b) a claim for a sum due under such a contract;

(c) a claim for the recovery of a sum in pursuance of any statutory provision relating to the terms or performance of such a contract;
being in each case a claim such that a court in Northern Ireland would under the law for the time being in force have jurisdiction to hear and determine an action in respect of the claim.

(3) An order under this Article may make provision with respect to any such claim only if it satisfies either of the following conditions, that is to say—

- (a) it arises or is outstanding on the termination of the employee's employment; or
- (b) it arises in circumstances which also give rise to proceedings already or simultaneously brought before an industrial tribunal otherwise than by virtue of this Article;

or, if the order so provides, it satisfies both those conditions.

(4) Where on proceedings under this Article, an industrial tribunal finds that the whole or part of a sum claimed in the proceedings is due, the tribunal shall order the respondent to the proceedings to pay the amount which it finds due.

(5) Without prejudice to the generality of the power to make supplementary, incidental or transitional provision in an order under this Article, such an order may include provisions—

- (a) as to the manner in which and time within which proceedings are to be brought by virtue of this Article; and
- (b) modifying any other statutory provision.

(6) Regulations under Article 59 of the No. 1 Order may include provision for enabling an industrial tribunal to hear and determine proceedings brought by virtue of this Article concurrently with proceedings brought before the tribunal otherwise than by virtue of this Article.

(7) Any jurisdiction conferred on an industrial tribunal by virtue of this Article in respect of any claim shall be exercisable concurrently with any court in Northern Ireland which has jurisdiction to hear and determine an action in respect of the claim.

(8) In this Article "personal injuries" includes any disease and any impairment of a person's physical or mental condition; and any reference to breach of a contract includes a reference to breach of—

- (a) a term implied in a contract by or under any statutory provision or otherwise;
- (b) a term of a contract as modified by or under any statutory provision or otherwise; and
- (c) a term which, although not contained in a contract, is incorporated in the contract by another term of the contract.

(9) An order under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (a) shall apply accordingly.

Application of certain supplementary provisions of No. 1 Order

58.—(1) Article 72 of the No. 1 Order (recoupment of unemployment

(a) 1946 c. 36.

benefit and supplementary benefit) shall apply to a payment under this Order by an employer to an employee or a payment by an employer to an employee of a nature similar to, or for a purpose corresponding to the purpose of, any payment under this Order as it applies to the payments referred to in Article 72 (6) of the No. 1 Order; and accordingly in Article 72 (6) (b) of that Order after the words "this Order" where they twice occur there shall be inserted the words "or the No. 2 Order".

(2) Schedule 2 to the No. 1 Order shall have effect for calculating for the purposes of this Order the normal working hours and the amount of a week's pay of any employee; and accordingly in Article 69 (1) of the No. 1 Order after the words "this Order" there shall be inserted the words ", the No. 2 Order".

(3) Schedule 4 to the No. 1 Order shall have effect for the purposes of this Order in relation to the death of an employee or employer; and accordingly in Article 71 of the No. 1 Order after the words "have effect" there shall be inserted the words "for the purposes of this Order and the No. 2 Order" and in the said Schedule 4 in paragraph 1 after the words "this Schedule)" there shall be inserted the words "and the No. 2 Order".

Restrictions on contracting out

59.—(1) Except as provided by paragraph (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order;
- (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Order before, an industrial tribunal, or from making any reference, claim or complaint under Part III.

(2) Paragraph (1) shall not apply—

- (a) to any provision in a collective agreement excluding rights under Article 3 if an order under Article 8 is for the time being in force in respect of it;
- (b) to any union membership agreement so far as it affects the rights of an employee under Article 33 in accordance with paragraph (4) of that Article;
- (c) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where the Department has taken action in accordance with Article 56 (3) or (4);
- (d) to any agreement such as is referred to in Article 54 (6) (b) or (c), or paragraph 11 (b) or (c) of Schedule 3, to the extent that it varies or supersedes an award under Article 54, or, as the case may be, paragraph 10 of Schedule 3.

Arrangements with Great Britain

60.—(1) The Head of the Department shall be the appropriate Northern Irish authority for the purposes of section 128 of the Employment Protection Act 1975 (a) and may, with the consent of the Department of Finance, make reciprocal arrangements with the Secretary of State for co-ordinating the provisions of this Order and Parts III to V of the No. 1 Order with the provisions of the corresponding Great Britain legislation so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.

(a) 1975 c. 71.

(2) For the purpose of giving effect to any such arrangements the Head of the Department shall have power, in conjunction with the Secretary of State,—

- (a) where the arrangements relate to the provisions of this Order relating to maternity pay, to make any necessary adjustments between the Northern Ireland Maternity Pay Fund and the Maternity Pay Fund established under the Employment Protection Act 1975; and
- (b) where the arrangements relate to the provisions of Articles 42 to 46 of the No. 1 Order, to make any necessary financial adjustments between the Northern Ireland Redundancy Fund and the Redundancy Fund established under the Redundancy Payments Act 1965.

(3) The Head of the Department may make regulations for giving effect in Northern Ireland to any such arrangements and any such regulations may provide that this Order and Parts III to V of the No. 1 Order shall 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 corresponding Great Britain legislation shall have a corresponding effect for the purposes of this Order and Parts III to V of the No. 1 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 or Parts III to V of the No. 1 Order and under the corresponding Great Britain legislation which of those rights shall be available to the person concerned.

(4) In this Article “the corresponding Great Britain legislation” means the Trade Union and Labour Relations Acts 1974 and 1976 (a) so far as they relate to unfair dismissal and the Employment Protection Act 1975.

Parity Order

61.—(1) Where it appears to the Head of the Department that under any enactment of the Parliament of the United Kingdom a change is contemplated or has been made in the law of Great Britain relating to—

- (a) the Redundancy Fund or redundancy payments or any other matter dealt with by or under the Redundancy Payments Acts 1965 and 1969 (b);
or
- (b) the Maternity Pay Fund or maternity pay or any other matter dealt with by or under sections 34 to 52 of, and Schedule 3 to, the Employment Protection Act 1975,

the Head of the Department may by order make provision for the purpose of securing that a corresponding change, with such modifications, if any, as are necessary or expedient, is made in the law of Northern Ireland.

(2) Section 1 (3) and (4) of the Social Services (Parity) Act (Northern Ireland) 1971 (c) shall apply to an order under this Article as it applies to an order under section 1 of that Act.

Application to Crown

62.—(1) Subject to paragraphs (2) to (6), the provisions of this Order (except Articles 27, 43, 48, 53 and 54) shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.

(2) In this Article, subject to paragraphs (3) and (4), “Crown employment” means employment under or for the purposes of a Northern Ireland department or a department of the Government of the United Kingdom.

(a) 1974 c. 52; 1976 c. 7. (b) 1965 c. 62; 1969 c. 8. (c) 1971 c. 21 (N.I.).

(3) This Article does not apply to service as a member of the naval, military or air forces of the Crown, or of any women's service administered by the Defence Council, but does apply to employment by any association established for the purposes of the Auxiliary Forces Act 1953 (a).

(4) For the purposes of this Article, Crown employment does not include any 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 this Article for the purpose of safeguarding national security, or protecting public safety or public order; and any document purporting to be a certificate so issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.

(5) For the purposes of the application of the provisions of this Order in relation to Crown employment in accordance with paragraph (1)—

- (a) any reference to an employee shall be construed as a reference to a person in Crown employment;
- (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of a person in Crown employment;
- (c) any reference to dismissal shall be construed as a reference to the termination of Crown employment;
- (d) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 48 (3) of the Act of 1965, are treated as equivalent to redundancy in relation to Crown employment;
- (e) the reference in Article 51 (1) (e) to the employer's undertaking shall be construed as a reference to the national interest; and
- (f) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown or Head of Department, as a reference to his functions or (as the context may require) to the department of which he is in charge and, in relation to a government department, shall be construed as a reference to the functions of the department, or (as the context may require) to the department.

(6) 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 39 shall require him to be allowed time off work for public duties connected with any such activities.

(7) For the purposes of the application of the provisions of this Order in relation to employment by any body established under the Health and Personal Social Services (Northern Ireland) Order 1972 which exercises functions on behalf of the Crown, Article 27 shall have effect as if paragraphs (3) and (4) were omitted.

Regulations and orders

63.—(1) All regulations under this Order shall be subject to negative resolution.

(2) An order under Article 5 (5), 15 (5), 16 (3), 49 (11), or paragraph 7 of Schedule 2 shall come into operation on such date as is specified in the order and shall be laid before the Assembly as soon as may be after it is made, but

shall cease to have effect upon 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) An order under Article 6 (4), 9 (3), 39 (4), 46 or 56 (8) shall be subject to negative resolution.

(4) Any power conferred by any provision of this Order to make an order or regulations shall include power to make such incidental, supplementary or transitional provisions as appear to the authority exercising the power to be necessary or expedient.

Financial provisions

64. There shall be paid out of the Maternity Pay Fund into the Consolidated Fund sums equal to the amount of any expenses incurred by the Department, any other Northern Ireland department or any department of the Government of the United Kingdom in exercising functions under the provisions of this Order relating to maternity pay.

Amendments, transitional provisions and repeals

65.—(1) The statutory provisions specified in Schedule 4 shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential on the preceding provisions of this Order.

(2) The transitional provisions in Schedule 5 shall have effect.

(3) The statutory provisions specified in columns 1 and 2 of Schedule 6 (which include certain statutory provisions which are obsolete, spent or unnecessary) are hereby repealed to the extent specified in column 3 of that Schedule.

N. E. Leigh,
Clerk of the Privy Council.

	SCHEDULE 1	Article 9.
PROVISIONS LEADING TO SUSPENSION ON MEDICAL GROUNDS		
1. The Paints and Colours Manufacture Regulations 1907.	S.R. & O. 1907 No. 17	Reg. 5.
2. The Yarn (Dyed by Lead Compounds) Heading Regulations 1907.	S.R. & O. 1907 No. 616	Reg. 4.
3. The Vitreous Enamelling Regulations 1908.	S.R. & O. 1908 No. 1258	Reg. 10.
4. The Tinning of Metal Hollowware, Iron Drums and Harness Furniture Regulations 1909.	S.R. & O. 1909 No. 720	Reg. 6.
5. The Lead Smelting and Manufacture Regulations 1911.	S.R. & O. 1911 No. 752	Reg. 13.
6. The Manufacture and Decoration of Pottery Regulations 1913.	S.R. & O. 1913 No. 2	Reg. 2.
7. The Lead Compounds Manufacture Regulations 1921.	S.R. & O. 1921 No. 1443	Reg. 11.
8. The Chemical Works Regulations 1922.	S.R. & O. (N.I.) 1922 No. 66	Reg. 30.
9. The Lead Paint Regulations (Northern Ireland) 1927.	S.R. & O. (N.I.) 1927 No. 129	Reg. 6.
10. The Electric Accumulator Special Regulations (Northern Ireland) 1945.	S.R. & O. (N.I.) 1945 No. 41	Reg. 19.

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|---|-------------------------------|--|
| 11. The Factories Act (Northern Ireland) 1965. | 1965 c. 20 (N.I.) | Section 74 (2)
(including that section as extended by section 126). |
| 12. The Ionising Radiations (Sealed Sources) Regulations (Northern Ireland) 1969. | S.R. & O. (N.I.) 1969 No. 318 | Regs. 15 and 30. |

Article 30

SCHEDULE 2

SUPPLEMENTARY PROVISIONS AS TO MATERNITY

Introductory

1. References in this Schedule to provisions of the No. 1 Order relating to unfair dismissal and to provisions of the Act of 1965 are references to those provisions as they apply by virtue of Article 30.

Adaptation of unfair dismissal provisions

2.—(1) Article 22 of the No. 1 Order (fair and unfair dismissal) shall have effect as if for paragraph (10) there were substituted the following paragraph:—

“(10) Subject to paragraphs (4), (8) and (9), the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether the employer can satisfy the tribunal that in the circumstances (having regard to equity and the substantial merits of the case) he would have been acting reasonably in treating it as a sufficient reason for dismissing the employee if she had not been absent from work.”.

(2) If in the circumstances described in Article 28 (4) no offer is made of such alternative employment as is referred to in that paragraph, then the dismissal which by virtue of Article 30 is treated as taking place shall, notwithstanding anything in Article 22 of the No. 1 Order, be treated as an unfair dismissal for the purposes of the No. 1 Order.

(3) The following references shall be construed as references to the notified day of return, that is to say—

- (a) references in the No. 1 Order (except in Article 39) to the effective date of termination;
- (b) references in Article 31 of the No. 1 Order to the date of termination of employment.

(4) The following provisions of the No. 1 Order shall not apply, that is to say, Articles 21, 22 (6) and (7), 24 to 27, 32 (7), 34 (4), (6) and (7), 35 (1) to (3) and (5), 68 (2) and 76 (1) to (6).

(5) For the purposes of Part II of Schedule 2 to the No. 1 Order as it applies for the calculation of a week's pay for the purposes of Article 32 or 34 of that Order, the calculation date is the last day on which the employee worked under the original contract of employment.

Adaptation of redundancy payments provisions

3.—(1) References in the Act of 1965 shall be adapted as follows, that is to say—

- (a) references to the relevant date, wherever they occur, shall be construed, except where the context otherwise requires, as references to the notified day of return;
- (b) references in sections 12 (4) and 13 (3) of that Act (offer of alternative employment) to a renewal or re-engagement taking effect immediately on the ending of employment under the previous contract or after an interval of not more than four weeks thereafter, shall be construed as references to a renewal or re-engagement taking effect on the notified day of return or not more than four weeks after that day; and
- (c) references in section 13 (5) of that Act (trial period) to the provisions of the previous contract shall be construed as references to the provisions of the original contract of employment.

(2) Nothing in Article 30 shall prevent an employee from being treated, by reason of the operation of section 13 (3) of the Act of 1965, as not having been dismissed for the purposes of that Act.

(3) The following provisions of the Act of 1965 shall not apply, that is to say, sections 11 (1) (b), 12 (1) and (2), 13 (1), (2) and (10), 14 to 17, 20, 21, 26 (1) and (2), 32, 33 and 47, paragraphs 4 and 5 (3) and (5) of Schedule 3 and Schedule 5.

(4) For the purposes of Part II of Schedule 2 to the No. 1 Order as it applies for the calculation of a week's pay for the purposes of Schedule 3 to the Act of 1965 (computation of redundancy payments), the calculation date is the last day on which the employee worked under the original contract of employment.

Dismissal during period of absence

4.—(1) This paragraph applies to the dismissal of an employee who is under the foregoing provisions of this Order entitled to return to work and whose contract of employment continues to subsist during the period of her absence but who is dismissed by her employer during that period after the beginning of the 11th week before the expected week of confinement.

(2) For the purposes of sub-paragraph (1) an employee shall not be taken to be dismissed during the period of her absence if the dismissal occurs in the course of the employee's attempting to return to work in accordance with her contract in circumstances in which paragraph 5 applies.

(3) In the application of the No. 1 Order to a dismissal to which this paragraph applies, the following provisions shall not apply, that is to say, Articles 22 (6) and (7), 24, 26, 27 and 76 (1) to (6).

(4) Any such dismissal shall not affect the employee's right to return to work, but—

- (a) compensation in any unfair dismissal proceedings arising out of that dismissal shall be assessed without regard to the employee's right to return; and
- (b) that right shall be exercisable only on her repaying any redundancy payment or compensation for unfair dismissal paid in respect of that dismissal, if the employer requests such repayment.

Contractual right to return

5.—(1) An employee who has a right both under this Order and under a contract of employment, or otherwise, to return to work, 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) The provisions of Articles 28 to 30 and paragraphs 1 to 4 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (1) as they apply to the exercise of the right to return conferred solely by this Order.

Prior redundancy

6. If in proceedings arising out of a failure to permit an employee to return to work, the employer shows—

- (a) that the reason for the failure is that the employee is redundant; and
- (b) that the employee was dismissed or, had she continued to be employed by him, would have been dismissed, by reason of redundancy during her absence on a day earlier than the notified day of return and falling after the beginning of the 11th week before the expected week of confinement,

then, for the purposes of the Act of 1965 the employee—

- (i) shall not be treated as having been dismissed with effect from the notified day of return; but
- (ii) shall, if she would not otherwise be so treated, be treated as having been continuously employed until that earlier day and as having been dismissed by reason of redundancy with effect from that day.

Power to amend or modify

7. The Department may by order amend the provisions of this Schedule or modify the application of those provisions to any description of case.

Article 48

SCHEDULE 3

EXTENSION OF TERMS AND CONDITIONS

PART I

RECOGNISED TERMS AND CONDITIONS AND GENERAL LEVEL OF
TERMS AND CONDITIONS

1. A claim may be reported to the Department, in accordance with and subject to the following provisions of this Part, that as respects any worker an employer is, in respect of any matter, observing terms and conditions of employment less favourable than the recognised terms and conditions or, where, or so far as, there are no recognised terms and conditions, the general level of terms and conditions.

2. In this Part—

(a) the “recognised terms and conditions” means terms and conditions of workers in comparable employment in the trade or industry, or section of a trade or industry, in which the employer in question is engaged, either generally or in the district in which he is so engaged, which have been settled by an agreement or award, to which the parties are employers’ associations and independent trade unions which represent (generally or in the district in question, as the case may be) a substantial proportion of the employers and of the workers in the trade, industry or section, being workers of the description to which the agreement or award relates; and

(b) the “general level of terms and conditions” means the general level of terms and conditions observed for comparable workers by employers—

(i) in the trade, industry or section in which the employer in question is engaged in the district in which he is so engaged; and

(ii) whose circumstances are similar to those of the employer in question,

and for the purposes of sub-paragraph (a) the reference to terms and conditions, in a case where minimum terms and conditions have been settled as mentioned in that sub-paragraph, is a reference to those minimum terms and conditions.

3. No claim shall be reported under paragraph 1 as respects workers whose remuneration or terms and conditions, or minimum remuneration or terms and conditions, is or are fixed (otherwise than by the employer, with or without the approval of any other person) in pursuance of any statutory provision other than—

(a) the Agricultural Wages (Regulation) Act (Northern Ireland) 1939;

(b) the Wages Councils Act (Northern Ireland) 1945; or

(c) this Schedule;

or in the case of whom provision is made by or under any such statutory provision for the settlement of questions as to remuneration or terms and conditions or minimum remuneration or terms and conditions.

4. A claim may be reported under paragraph 1, where, or so far as, the claim is founded upon recognised terms and conditions, by an employers’ association or an independent trade union being one of the parties mentioned in paragraph 2 (a).

5.—(1) A claim may be reported under paragraph 1, where, or so far as, the claim is founded upon the general level of terms and conditions, by—

(a) an employers’ association having members engaged in the trade, industry or section, in the district to which the claim relates; or

(b) subject to sub-paragraph (2), a trade union of which any worker concerned is a member.

(2) Where any such worker is of a description in respect of which an employer recognises one or more independent trade unions, such a claim may be reported by a trade union only if it is that recognised union or, as the case may be, one of those recognised unions.

6. A claim under paragraph 1 shall be in writing and shall contain such particulars as the Department may require.

7. When a claim is reported to the Department under paragraph 1 the Department shall take any steps which seem to it expedient to settle the claim or to secure the use of appropriate machinery to settle the claim and shall if the claim is not otherwise settled refer it to the Industrial Court.

8. The Industrial Court shall hear and determine the claim and it shall be for—

- (a) the party making the claim to show that there are recognised terms and conditions and what those terms and conditions are, or, as the case may be, what the general level of terms and conditions is; and
- (b) the employer to satisfy the Industrial Court that he is observing terms and conditions of employment not less favourable than the recognised terms and conditions or, as the case may be, the general level of terms and conditions.

9. In ascertaining whether, in respect of any matter which is the subject of a claim under paragraph 1, the employer is observing terms and conditions less favourable than the recognised terms and conditions or, as the case may be, the general level of terms and conditions regard shall be had to the whole of the terms and conditions observed by the employer as respects the worker to whom the claim relates.

10. If the Industrial Court finds the claim wholly or partly well-founded it shall make an award that the employer shall observe the recognised terms and conditions or, as the case may be, terms and conditions conforming to the general level of terms and conditions and shall identify or specify—

- (a) the recognised terms and conditions or, as the case may be, terms and conditions conforming to the general level of terms and conditions;
- (b) the description or descriptions of employees in respect of which they are to be observed; and
- (c) the date from which they are to be observed, being a date not earlier than the date on which the employer was first informed of the claim giving rise to the award by the union or association which reported the claim to the Department.

11. Any terms and conditions which by an award under paragraph 10 the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee as from the date specified in the award, except in so far as they are superseded or varied—

- (a) by a subsequent award under that paragraph;
- (b) by a collective agreement between the employer and the trade union for the time being representing that employee; or
- (c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.

12. Where—

- (a) by virtue of any statutory provision other than one contained in this Part, providing for minimum remuneration or terms and conditions a contract of employment is to have effect as modified by an award, order or other instrument under that statutory provision, and
- (b) by virtue of an award under paragraph 10 any terms and conditions are to have effect as part of that contract,

that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under paragraph 10, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.

13. If in the course of determining a claim under this Schedule it appears to the Industrial Court that a collective agreement or pay structure within the meaning of section 3 of the Equal Pay Act (Northern Ireland) 1970 contains any provision applying specifically to men only or to women only so that it would, had it been referred to the Industrial Court by the Department under that section, have required amendment in accordance with subsection (4) of that section so as to remove that discrimination between men and women—

- (a) that provision shall not be regarded as part of the recognised terms and conditions or, as the case may be, shall not be taken into account in assessing the general level of terms and conditions; and
- (b) the Industrial Court shall report its opinion to the Department and, in the case of a collective agreement, to the parties to that agreement or, in the case of a pay structure, to the employer concerned.

14. For the purposes of this Schedule the carrying on of the activities of public or local authorities shall be treated as the carrying on of a trade or industry.

PART II

COLLECTIVELY NEGOTIATED TERMS AND CONDITIONS IN CERTAIN INDUSTRIES

15. A claim may be reported to the Department under this paragraph by an independent trade union as respects any worker who is a member of that trade union and who falls within the field of operation of a wages council or of the Agricultural Wages Board for Northern Ireland—

- (a) that the union is a party to one or more collective agreements and that those agreements cover a significant number of establishments within the field of operation of that council or Board either generally or in the district in which the worker is employed; and
- (b) that in those establishments the circumstances of the employer are similar to those of the employer of the worker in question; and
- (c) that the employer is paying him less than the lowest current rate of remuneration (disregarding any rate agreed to more than 12 months before the date on which the claim was reported) payable to workers of his description under any of those agreements.

16. The provisions of paragraphs 7, 8 and 10 to 14 shall apply to a claim under paragraph 15—

- (a) as if for any reference to the recognised terms and conditions there were substituted a reference to the rate of remuneration referred to in paragraph 15 (c);
- (b) as if references to the general level of terms and conditions were omitted; and
- (c) as if the reference in paragraph 12 (a) to Part I were a reference to Part II and so much of Part I as is thereby applied.

PART III

TERMS AND CONDITIONS PROVIDED UNDER ARTICLE 15 OF THE NO. 1 ORDER

17. Where a temporary institution created under Article 15 (3) of the No. 1 Order provides terms and conditions of employment for workers in any sector of employment, a claim may be reported to the Department under this paragraph that as respects any worker in that sector an employer engaged in that sector is, in respect of any matter, observing terms and conditions of employment less favourable than the terms and conditions so provided.

18. The provisions of paragraphs 4 and 6 to 13 shall apply to a claim under paragraph 17—

- (a) as if for any reference to the recognised terms and conditions there were substituted a reference to the terms and conditions of employment provided for the worker in question by the temporary institution created under Article 15 (3) of the No. 1 Order;
- (b) as if references to the general level of terms and conditions were omitted;
- (c) as if the reference in paragraph 4 to the parties mentioned in paragraph 2 (a) were a reference to the parties represented on the said temporary institution;
- (d) as if the reference in paragraph 12 (a) to Part I were a reference to Part III and so much of Part I as is thereby applied.

SCHEDULE 4

Article 65 (1).

AMENDMENTS

Truck Amendment Act 1887

1. In section 2 omit the words from "as defined" to "ten" and from "to whom" to "this Act" and at the end of the section insert the following paragraph:—

"In this section "workman" does not include a seaman or a domestic or menial servant but means any other person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of eighteen years or above that age, has entered into or works under a contract with an employer, whether the contract be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour."

Terms and Conditions of Employment Act (Northern Ireland) 1963 (c. 2)

2. Parts II and III shall cease to have effect.

Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (c. 19)

3.—(1) In section 22 (1) for the words from the beginning to "section 2 of that Act" substitute the words "A claim under paragraph 1 of Schedule 3 to the Industrial Relations (No. 2) (Northern Ireland) Order 1976 (claims as to recognised terms and conditions and general level of terms and conditions) may be reported to the Department in accordance with that Schedule" and for the words "under section 4 of that Act" substitute the words "under that Schedule".

(2) In section 22 (2) for the words from the beginning to "section 4 of that Act" substitute the words "Where a claim which is reported to the Department under the said paragraph 1 is founded upon recognised terms and conditions and relates to an agreement in respect of which an order under section 21 is for the time being in force, and the Industrial Court makes an award".

(3) In section 41 (4) for the words "the appropriate allocation to the Northern Ireland Redundancy Fund" substitute the words "the amount paid into the Northern Ireland Redundancy Fund from the appropriate employment protection allocation".

(4) In paragraph 5 (1) of Schedule 1 after head (c) insert the following head:—
"or

(d) absent from work wholly or partly because of pregnancy or confinement,".

(5) In paragraph 5 (2) of Schedule 1 after the words "head (a)" insert the words "or, subject to paragraph 5A, head (d)".

(6) After paragraph 5 of Schedule 1 insert the following paragraph:—

"5A. If an employee returns to work in accordance with Article 29 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976 after a period of absence from work wholly or partly occasioned by pregnancy or confinement, every week during that period shall count in computing a period of employment, notwithstanding that it does not fall under paragraphs 3, 4 or 4A."

(7) In paragraph 7 (1) of Schedule 1 for the words "or 5" substitute the words "5 or 5A".

(8) At the end of paragraph 5 of Schedule 2 add the words “(including any period of time off taken in accordance with Articles 37, 38, 39 or 41 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976)”.

Equal Pay Act (Northern Ireland) 1970 (c. 32)

4. In section 3 (2) for paragraph (b) substitute the following paragraph:—

“(b) if an award or determination is, or has been, made under any statutory provision requiring an employer to observe the collective agreement, that award or determination shall have effect by reference to the agreement as so amended.”.

Industrial Relations (Northern Ireland) Order 1976

(S.I. 1976/1043 (N.I. 16))

5.—(1) In Article 2 (2) after the definition of “job” insert the following definition:—

““the No. 2 Order” means the Industrial Relations (No. 2) (Northern Ireland) Order 1976;”.

(2) In Article 15 (1) (b) for the words from “under Part I of” to the end of the sub-paragraph substitute the words “under Parts I or II of Schedule 3 to the No. 2 Order; and”.

(3) In Article 16 (3) for the words “Industrial Courts Acts (Northern Ireland) 1919 and 1963” substitute the words “Industrial Courts Act 1919”.

(4) In Article 23 (3) after the words “Article 22” insert the words “and of Article 14 of the No. 2 Order” and for the words “that Article” substitute the words “those Articles”.

(5) In Article 29 (2) for sub-paragraph (a) substitute the following sub-paragraph:—

“(a) a complaint could be made to the Fair Employment Agency for Northern Ireland under Part III of the Fair Employment (Northern Ireland) Act 1976; or”.

(6) In Article 38 (2) for the words “any such Act of Parliament as is referred to in Article 29 (2) (a)” substitute the words “the Fair Employment (Northern Ireland) Act 1976”.

(7) In Article 42 (4) for the words “Article 56 (5)” substitute the words “Article 43 (2) of the No. 2 Order”.

(8) In Article 43 (4) for the words from “and any such amount” to the end of the paragraph substitute the words “, maternity pay and any such payment as is referred to in Article 43 (2) of the No. 2 Order”.

(9) In Article 56 after paragraph (4) insert the following paragraph:—

“(4A) For the purposes of this Part references to redundancy and to being redundant, in relation to an employee, are references to—

(a) the fact that the employer has ceased, or intends to cease to carry on the business for the purposes of which the employee is or was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee is or was so employed, or

(b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he is or was so employed, have ceased or diminished or are expected to cease or diminish;

and in this paragraph “cease” means cease either permanently or temporarily and from whatsoever cause, and “diminish” has a corresponding meaning.”.

(10) For Article 59 (4) substitute the following paragraph:—

“(4) In relation to proceedings under Article 29—

(a) where the employee has expressed a wish to be re-instated or re-engaged which has been communicated to the employer at least seven days before the hearing of the complaint; or

(b) where the proceedings arise out of the employer's failure to permit the employee to return to work after an absence due to pregnancy or confinement,

regulations shall include provision for requiring the employer to pay the costs or expenses of any postponement or adjournment of the hearing caused by his failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the complainant was dismissed, or, as the case may be which she held before her absence, or of comparable or suitable employment."

(11) Articles 69, 71, 72, and Schedule 4 shall be amended in accordance with Article 58.

(12) Article 76 (5) and (6) shall cease to have effect.

(13) In Article 81 (a) after the word "behalf)" insert the words "or by any other Northern Ireland department or any department of the Government of the United Kingdom" and omit the word "its".

(14) In Schedule 1 for paragraph 7 substitute the following paragraph:—

"7. The Agency may pay, or make such payments towards the provision of, such remuneration, allowances (including allowances for expenses), pensions or gratuities to or in respect of the chairman and other members of the Agency, or any of them, as the Department, with the approval of the Department of the Civil Service may determine."

SCHEDULE 5

Article 65 (2).

TRANSITIONAL PROVISIONS

1.—(1) Articles 9 (4), 13, 14, 31 and the provisions of paragraph 5 of Schedule 4 so far as they amend the No. 1 Order as respects the law relating to unfair dismissal, shall apply to a dismissal where the effective date of termination in relation to that dismissal falls on or after the coming into operation of the relevant provision.

(2) Where the notice required to be given by an employer to terminate a contract of employment by section 1 (1) of the Act of 1965 (minimum period of notice) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the effective date of termination as defined by Article 21 (4) of the No. 1 Order that later date shall be treated as the effective date of termination for the purposes of sub-paragraph (1) as it applies to Article 14 and the provisions of paragraph 5 of Schedule 4 referred to in that sub-paragraph.

2. Any award made under Part I of the Terms and Conditions of Employment Act (Northern Ireland) 1963 which is in force immediately before the coming into operation of Schedule 3 shall continue to have effect after the coming into operation of that Schedule, notwithstanding the repeal of that Part, as if it had been made under that Schedule and may be superseded or varied accordingly.

3.—(1) Any provision of paragraph 3 of Schedule 4 so far as it amends the Act of 1965 as respects entitlement to or the computation of a redundancy payment shall, subject to sub-paragraph (2), have effect in relation to dismissals and to lay-off or short-time where the relevant date falls after the coming into operation of the relevant provision.

(2) Where the notice required to be given by an employer to terminate a contract of employment by section 1 (1) of the Act of 1965 (minimum period of notice) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer expire on a date later than the relevant date as defined by section 13 (9) of the Act of

1965, that later date shall be treated as the relevant date for the purposes of subparagraph (1).

4. The provisions of this Order which affect the computation of an employee's period of continuous employment for the purposes of this Order or any other statutory provision shall have effect in relation to any week or event, whether falling or occurring (wholly or partly) before or after the coming into operation of the relevant provision, where the computation falls to be made after the coming into operation of that provision.

5. Nothing in this Schedule shall prejudice the operation of sections 28 and 29 (effect of repeal and substituting provisions) of the Interpretation Act (Northern Ireland) 1954.

Article 65 (3)

SCHEDULE 6

REPEALS

Chapter or Number	Short Title	Extent of Repeal
38 & 39 Vict. c. 90.	The Employers and Workmen Act 1875.	The whole Act.
43 & 44 Vict. c. 16.	The Merchant Seamen (Payment of Wages and Rating) Act, 1880.	The whole Act.
4 & 5 Geo. 6 c. 21.	The Truck Act (Northern Ireland) 1940.	Section 1 (1) and (3).
1963 c. 2.	The Terms and Conditions of Employment Act (Northern Ireland) 1963.	The whole Act.
1969 c. 30.	The Judgments (Enforcement) Act (Northern Ireland) 1969.	In Part II of Schedule 4 the entry relating to the Employers and Workmen Act 1875.
1970 c. 12.	The Payment of Wages Act (Northern Ireland) 1970.	Section 2 (4) to (7). In section 4 (2) the words from "and, at or before" to the end. In section 4 (3) the words from "and, at or before" to the end. Section 7 (3). The Schedule.
S.I. 1976/1043 (N.I. 16).	The Industrial Relations (Northern Ireland) Order 1976.	Article 15 (5) and (6). Article 56 (5). Articles 74 and 75. Article 76 (5) and (6).

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order confers rights on certain employees in relation to guarantee payments, suspension on medical grounds, maternity, trade union membership and activities, time off work, the insolvency of an employer, itemised pay statements and terms and conditions of employment and provides remedies for breach of those rights. The Order also provides for the disclosure to trade union representatives by employers of certain information for the purposes of collective bargaining and requires the Labour Relations Agency to issue Codes of Practice in relation to the conduct of industrial relations.

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