

## SCHEDULES

### SCHEDULE 1

Article 42.

#### ARTICLES 48 TO 48F OF THE No. 2 ORDER, AS INSERTED

##### *“Access to employment*

##### **Refusal of employment on grounds related to union membership**

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

- (a) because he is, or is not, a member of a trade union, or
- (b) because he is unwilling to accept a requirement—
  - (i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or
  - (ii) to make payments or suffer deductions in the event of his not being a member of a trade union.

(2) A person who is thus unlawfully refused employment has a right of complaint to an industrial tribunal.

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

- (a) that employment to which the advertisement relates is open only to a person who is, or is not, a member of a trade union, or
- (b) that any such requirement as is mentioned in paragraph (1)(b) will be imposed in relation to employment to which the advertisement relates, a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks and is refused employment to which the advertisement relates, shall be conclusively presumed to have been refused employment for that reason.

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

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

- (a) refuses or deliberately omits to entertain and process his application or enquiry, or
- (b) causes him to withdraw or cease to pursue his application or enquiry, or
- (c) refuses or deliberately omits to offer him employment of that description, or
- (d) makes him an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted, or
- (e) makes him an offer of such employment but withdraws it or causes him not to accept it.

*Status: This is the original version (as it was originally made).*

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

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

- (a) by virtue of which the holder is an official of the union, or
- (b) to which Part III applies (duty to hold elections).

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

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

**48A.**—(1) It is unlawful for an employment agency to refuse a person any of its services—

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

(2) A person who is thus unlawfully refused any service of an employment agency has a right of complaint to an industrial tribunal.

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

- (a) that any service of an employment agency is available only to a person who is, or is not, a member of a trade union, or
- (b) that any such requirement as is mentioned in paragraph (1)(b) will be imposed in relation to a service to which the advertisement relates, a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks to avail himself of and is refused that service, shall be conclusively presumed to have been refused it for that reason.

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

- (a) refuses or deliberately omits to make the service available to him, or
- (b) causes him not to avail himself of the service or to cease to avail himself of it, or
- (c) does not provide the same service, on the same terms, as is provided to others.

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

#### **Time limit for proceedings**

**48B.**—(1) An industrial tribunal shall not consider a complaint under Article 48 or 48A unless it is presented to the tribunal—

- (a) before the end of the period of three months beginning with the date of the conduct to which the complaint relates, or
  - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.
- (2) The date of the conduct to which a complaint under Article 48 relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
  - (b) in the case of a deliberate omission—
    - (i) to entertain and process the complainant's application or enquiry, or
    - (ii) to offer employment, the end of the period within which it was reasonable to expect the employer to act;
  - (c) in the case of conduct causing the complainant to withdraw or cease to pursue his application or enquiry, the date of that conduct;
  - (d) in a case where an offer was made but withdrawn, the date when it was withdrawn;
  - (e) in any other case where an offer was made but not accepted, the date on which it was made.
- (3) The date of the conduct to which a complaint under Article 48A relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
  - (b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act;
  - (c) in the case of conduct causing the complainant not to avail himself of a service or to cease to avail himself of it, the date of that conduct;
  - (d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact provided was provided.

## **Remedies**

**48C.**—(1) Where the industrial tribunal finds that a complaint under Article 48 or 48A is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—

- (a) an order requiring the respondent to pay compensation to the complainant of such amount as the tribunal may determine;
  - (b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.
- (2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.
- (3) If the respondent fails without reasonable justification to comply with a recommendation to take action, the tribunal may increase its award of compensation or, if it has not made such an award, make one.
- (4) The total amount of compensation shall not exceed the limit for the time being imposed by Article 37 of the No. 1 Order (limit on compensation for unfair 'dismissal).

### **Complaint against employer and employment agency**

**48D.**—(1) Where a person has a right of complaint against a prospective employer and against an employment agency arising out of the same facts, he may present a complaint against either of them or against them jointly.

(2) If a complaint is brought against one only, he or the complainant may request the tribunal to join the other as a party to the proceedings. The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

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

- (a) finds that the complaint is well-founded as against the employer and the agency, and
- (b) makes an award of compensation, it may order that the compensation shall be paid by the one or the other, or partly by one and partly by the other, as the tribunal may consider just and equitable in the circumstances.

### **Awards against third parties**

**48E.**—(1) If in proceedings on a complaint under Article 48 or 48A either the complainant or the respondent claims that the respondent was induced to act in the manner complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the complainant or the respondent may request the industrial tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

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

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

- (a) finds that the complaint is well-founded,
- (b) makes an award of compensation, and
- (c) also finds that the claim in paragraph (1) is well-founded, it may order that the compensation shall be paid by the person joined instead of by the respondent, or partly by that person and partly by the respondent, as the tribunal may consider just and equitable in the circumstances.

(4) Where by virtue of Article 48D (complaint against employer and employment agency) there is more than one respondent, the above provisions apply to either or both of them.

### **Interpretation and other supplementary provisions**

**48F.**—(1) In Articles 48 to 48E—

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

“employment” means employment under a contract of employment, and related expressions shall be construed accordingly; and

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

- (2) For the purposes of Articles 48 to 48E as they apply to employment agencies—
- (a) services other than those mentioned in the definition of “employment agency” above shall be disregarded, and
  - (b) a trade union shall not be regarded as an employment agency by reason of services provided by it only for, or in relation to, its members.
- (3) References in Articles 48 to 48E to being or not being a member of a trade union are to being or not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions. Any such reference includes a reference to being or not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.
- (4) The remedy of a person for conduct which is unlawful by virtue of Article 48 or 48A is by way of a complaint to an industrial tribunal in accordance with this Order, and not otherwise. No other legal liability arises by reason that conduct is unlawful by virtue of either of those Articles.
- (5) Article 48A and the other provisions of this Order applying in relation to that Article, bind the Crown so far as they relate to the activities of an employment agency in relation to employment to which those provisions apply. This does not affect the operation of those provisions in relation to Crown employment by virtue of Article 9 of the Industrial Relations (Northern Ireland) Order 1993.
- (6) Articles 48 and 48A do not apply in relation to police service.
- (7) Articles 48 to 48E apply in relation to Crown employment otherwise than under a contract only where the terms of employment correspond to those of a contract of employment.”

## SCHEDULE 2

Article 150(2).

### AMENDMENTS

#### *The Commissioner for Complaints Act (Northern Ireland) 1969 (c. 25 N.I.)*

Part II of Schedule 1 (bodies subject to investigation) shall continue to have effect with the following entry (originally inserted by paragraph 12 of Schedule 2 to the 1992 Order)—

“Office of the Northern Ireland Commissioner for the Rights of Trade Union Members.”.

In Part II of Schedule 1 there shall be inserted at the appropriate place—

“Office of the Northern Ireland Commissioner for Protection Against Unlawful Industrial Action.”.

#### *The Northern Ireland Assembly Disqualification Act 1975 (c. 15)*

Part III of Schedule 1 (other disqualifying offices) shall continue to have effect with the following entry (originally inserted by paragraph 13 of Schedule 2 to the 1992 Order)—

“Northern Ireland Commissioner for the Rights of Trade Union Members.”.

In Part III of Schedule 1 there shall be inserted at the appropriate place—

“Northern Ireland Commissioner for Protection Against Unlawful Industrial Action.”.

*Status: This is the original version (as it was originally made).*

*Industrial Relations (Northern Ireland) Order 1976 (NI 16)*

In Article 2(2) for the definition of “trade dispute” substitute—

““trade dispute” has the meaning assigned to it by Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995”.

In Article 22D(4)(b) for head (ii) substitute-

“(ii) Article 35 or 60 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (deductions from pay).”.

In Article 80(2A) after “59(2C)” insert “or 61(3)”.

*Industrial Relations (No. 2) (Northern Ireland) Order 1976 (NI 28)*

In Article 37(1)(a) for “Article 2(4)” substitute “Article 96(1)”.

In Article 49(2) for “and 44” substitute “44 and 48 to 48F”. In Article 56(2) (a) for “and 44” substitute “44 and 48 to 48F”.

*The Industrial Relations (Northern Ireland) Order 1992 (NI 5)*

In Article 2 after paragraph (1) insert—

“(1A) Articles 2(2), 144 and 145 (interpretation) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 shall apply in relation to this Order as they apply in relation to that Order.”.

In Article 2(2) in the definition of “collective agreement” and “collective bargaining” for “paragraph (4)” substitute “Article 96(1)”.

In Article 2(2) at the appropriate places insert—

““agent”, in relation to a trade union or employers' association, means a banker or solicitor of, or any person employed as an auditor by, the union or association or any branch or section of the union or association;”

““financial affairs”, in relation to a trade union or employers' association, means affairs of the union or association relating to any fund which is applicable for the purposes of the union or association (including any fund of a branch or section of the union or association which is so applicable);”.

In Article 6(12) for “section 7” substitute “section 254”.

In Article 13(2)(b) for “principal executive committee” substitute “executive”.

In Article 23(3) in the definition of “political fund” for “Part VIII” substitute “Part V of the Trade Union and Labour Relations (Northern Ireland) Order 1995”.

In Article 37(9) for “Articles 10, 11 and 12” substitute “Articles 10 to 12”.

In Article 37 after paragraph (10) insert—

“(10A) In this Article “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes any member of any of the constituent or affiliated organisations.”.

In Article 69(5) for the words from “for the making” to the end substitute “for the performance of any of his functions”.

In Article 107(2) for the words from “Article” onwards substitute “Article 1(2), 90(14) or 95(12)”.

In Schedule 1, paragraph 10(2) shall cease to have effect. 158

*The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

In section 301(3) for “Article 67(3) to (5) of the Industrial Relations (Northern Ireland) Order 1992” substitute “Article 71(2) to (4) of the Trade Union and Labour Relations (Northern Ireland) Order 1995”.

*The Industrial Relations (Northern Ireland) Order 1993 (NI 11)*

In Article 9(1)(c) for “43 and 65(5)” substitute “and 43”.

*The Education and Libraries (Northern Ireland) Order 1993 (NI 12)*

In Article 19 in the definition of “trade dispute” for “Article 2(4) to (7) of the Industrial Relations (Northern Ireland) Order 1992” substitute “Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995.”.

SCHEDULE 3

Article 150(3).

TRANSITIONAL PROVISIONS

*General*

1.—(1) An order under Article 1 may contain such transitional provisions as appear to the Department to be appropriate.

(2) Nothing in the following provisions of this Schedule prejudices the generality of sub-paragraph (1).

(3) Nothing in this Schedule prejudices the operation of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954<sup>(1)</sup>.

*Elections for certain trade union positions*

2.—(1) Where a person was elected to a position to which Part III of this Order applies at an election held within the period of five years ending on 3 1st December 1993—

(a) Article 12(1)(a) shall have effect as if it did not require that Part to be satisfied in relation to that election; and

(b) the period of five years mentioned in Article 12(1)(b) shall be calculated from the date of that election.

(2) Sub-paragraph (1) does not apply if the only persons entitled to vote in the election were themselves persons holding positions to which Part III of this Order would have applied had that Part been in operation at the time.

*Deduction of trade union subscriptions*

3. For the purposes of Article 35 a deduction representing a payment to a trade union in respect of a worker’s membership which is made in accordance with arrangements existing between his employer and the union immediately before the day on which that Article comes into operation under

---

(1) 1954 c. 33 (N.I.)

*Status: This is the original version (as it was originally made).*

which deductions were made in his case before that day shall be treated as an authorised deduction where—

- (a) the day on which the deduction is made falls before the end of the period of one year beginning with the day on which that Article comes into operation, and
- (b) written notice from the worker stating that he does not wish such deductions to be made has not been received by the employer in time for it to be reasonably practicable for him to secure that the deduction is not made.

*Political resolutions*

4. Articles 66(1) and (2) of the 1992 Order shall, notwithstanding their repeal by this Order, continue to have effect in relation to resolutions mentioned in Article 66( 1) of that Order, as if for references to provisions of the 1992 Order there were substituted references to the corresponding provisions of this Order.

SCHEDULE 4

Article 150(4).

REPEALS

Chapter or Number	Short title	Extent of repeal
1875 c. 86.	The Conspiracy, and Protection of Property Act, 1875.	The whole Act.
1908 c. 57.		
The Coal Mines Regulation Act 1908.	The whole Act.	
1917 c. 8.	The Coal Mines Regulation (Amendment) Act 1917.	The whole Act.
1969 c. 6 (N.I.).	The Mines Act (Northern Ireland) 1969.	Section 161.  In Schedule 4, the entry relating to the Coal Mines Regulation Act 1908.
1970 c. 36.	The Merchant Shipping Act 1970.	Section 42(1).  In Schedule 3, paragraph 1.
1976 NI 15.	The Sex Discrimination (Northern Ireland) Order 1976.	Article 23(2).
1976 NI 16.	The Industrial Relations (Northern Ireland) Order 1976.	Article 62(1)(aa).
1983 NI 13.	The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983.	Article 9(3).  Article 13(12)(b).



Chapter or Number	Short title	Extent of repeal
1988 NI 7.	The Wages (Northern Ireland) Order 1988.	In Article 3(6) the words from “and where a certificate” to the end.  Article 7(3A).  In Schedule 4, paragraphs 1, 2 and 4.
1992 c. 52.	The Trade Union and Labour Relations (Consolidation) Act 1992.	In Schedule 2, paragraph 40(5) to (9).  In Schedule 3, paragraph 12.
1992 NI 5.	The Industrial Relations (Northern Ireland) Order 1992.	Article 2(2), except the definitions of “the appointed day”, “collective agreement”, “collective bargaining”, “the Companies Order”, “independent trade union”, “the Industrial Court” and “strike”.  Article 2(3) to (9).  Articles 15 to 20.  Articles 24 and 25.  Articles 29 to 36.  Article 38.  Parts VI to VIII.  Article 70(4).  Articles 71 to 73.  Part X.  Articles 101 to 103.  Article 105(1).  Article 105A(2)(c) and (3) to (5).  In Schedule 1, paragraph 10(2).  Schedules 2 and 3.  In Schedule 5, paragraphs 2(3) and (5) and 4.
1993 NI 11.	The Industrial Relations (Northern Ireland) Order 1993.	In Schedule 6, the amendments to the 1992 Order.

**Status:** *This is the original version (as it was originally made).*