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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART VI

#### PROTECTION FROM SUFFERING DETRIMENT ETC. IN EMPLOYMENT

##### CHAPTER I

##### RIGHTS NOT TO SUFFER DETRIMENT

#### [<sup>F1</sup>Jury service

**67M.**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the employee—

- (a) has been summoned under the Juries (Northern Ireland) Order [<sup>F2</sup>1996] (NI 6) or the Coroners (Northern Ireland) Act 1959 (c.15) to attend for service as a juror, or
- (b) has been absent from work because he attended at any place in pursuance of being so summoned.

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

(3) For the purposes of this Article, an employee is not to be regarded as having been subjected to a detriment by a failure to pay remuneration in respect of a relevant period unless under his contract of employment he is entitled to be paid that remuneration.

(4) In paragraph (3) “a relevant period” means any period during which the employee is absent from work because of his attendance at any place in pursuance of being summoned as mentioned in paragraph (1)(a).]

**F1** 2004 NI 19

**F2** Word in art. 67M(1)(a) substituted (3.8.2010) by [Employment Act \(Northern Ireland\) 2010 \(c. 12\)](#), ss. 7(1), 8(2), [Sch. 1 para. 6\(1\)](#)

#### Health and safety cases

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

- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,
- (b) being a representative of workers on matters of health and safety at work or member of a safety committee—
  - (i) in accordance with arrangements established under or by virtue of any statutory provision, or

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(ii) by reason of being acknowledged as such by the employer, the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

[<sup>F3</sup>(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),]

(c) being an employee at a place where—

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

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

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

<sup>F4</sup>(d) .....

<sup>F5</sup>(e) .....

[<sup>F6</sup>(1A) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the worker's employer done on the ground that—

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

(b) in circumstances of danger which the worker reasonably believed to be serious and imminent, the worker took (or proposed to take) appropriate steps to protect the worker or other persons from the danger.]

(2) For the purposes of paragraph [<sup>F7</sup>(1A)(b)] whether steps which [<sup>F8</sup>a worker] took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) [<sup>F9</sup>A worker] is not to be regarded as having been subjected to any detriment on the ground specified in paragraph [<sup>F10</sup>(1A)(b)] if the employer shows that it was (or would have been) so negligent for [<sup>F11</sup>the worker] to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

(4) <sup>F12</sup> . . . this Article does not apply where the [<sup>F13</sup>worker is an employee and the] detriment in question amounts to dismissal (within the meaning of<sup>F12</sup> Part XI).

<b>F3</b>	SR 1996/511
<b>F4</b>	Art. 68(1)(d) omitted (31.5.2021) by virtue of <a href="#">The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103)</a> , arts. 1, <b>3(a)</b> (with art. 7(3))
<b>F5</b>	Art. 68(1)(e) omitted (31.5.2021) by virtue of <a href="#">The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103)</a> , arts. 1, <b>3(a)</b> (with art. 7(3))
<b>F6</b>	Art. 68(1A) inserted (31.5.2021) by <a href="#">The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103)</a> , arts. 1, <b>3(b)</b> (with art. 7)
<b>F7</b>	Word in art. 68(2) substituted (31.5.2021) by <a href="#">The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103)</a> , arts. 1, <b>3(c)(i)</b>

- F8** Words in art. 68(2) substituted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, **3(c)(ii)**
- F9** Words in art. 68(3) substituted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, **3(d)(i)**
- F10** Word in art. 68(3) substituted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, **3(d)(ii)**
- F11** Words in art. 68(3) substituted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, **3(d)(iii)**
- F12** 1999 NI 9
- F13** Words in art. 68(4) inserted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, **3(e)**

#### [<sup>F14</sup>Working time cases

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

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of [<sup>F15</sup>the Working Time Regulations (Northern Ireland) 2016] ,
- (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
- (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,
- (d) being—
  - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
  - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,

performed (or proposed to perform) any functions or activities as such a representative or candidate,

- (e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or
- (f) alleged that the employer had infringed such a right.

(2) It is immaterial for the purposes of paragraph (1)(e) or (f)—

- (a) whether or not the worker has the right, or
- (b) whether or not the right has been infringed,

but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for paragraph (1)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) This Article does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part XI<sup>F16</sup>. . . .

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[  
<sup>F17</sup>(5) A reference in this Article to [<sup>F18</sup>the Working Time Regulations (Northern Ireland) 2016] includes a reference to

(a) the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.  
 [ the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 [<sup>F20</sup>; <sup>F21</sup> ...  
<sup>F19</sup>(b)  
 (c) the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008<sup>F22</sup>; and]  
<sup>F23</sup>(d) the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018.]]]]

- F14** SR 1998/386  
**F15** Words in art. 68A(1)(a) substituted (28.2.2016) by [The Working Time Regulations \(Northern Ireland\) 2016 \(S.R. 2016/49\)](#), regs. 1, **53(3)(a)(i)** (with reg. 22(1))  
**F16** 1999 NI 9  
**F17** SI 2003/3049  
**F18** Words in art. 68A(5) substituted (28.2.2016) by [The Working Time Regulations \(Northern Ireland\) 2016 \(S.R. 2016/49\)](#), regs. 1, **53(3)(a)(ii)** (with reg. 22(1))  
**F19** SI 2004/1713  
**F20** Art. 68A(5)(c) and preceding word inserted (1.10.2008) by [Cross-border Railway Services \(Working Time\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/315\)](#), reg. 19, **Sch. 3 para. 2(2)**  
**F21** Word in art. 68A(5)(b) omitted (17.3.2014) by virtue of [The Merchant Shipping \(Maritime Labour Convention\) \(Hours of Work\) \(Amendment\) Regulations 2014 \(S.I. 2014/308\)](#), reg. 1(2), **Sch. para. 3(2)(a)**  
**F22** Word in art. 68A(5)(c) inserted (17.3.2014) by [The Merchant Shipping \(Maritime Labour Convention\) \(Hours of Work\) \(Amendment\) Regulations 2014 \(S.I. 2014/308\)](#), reg. 1(2), **Sch. para. 3(2)(b)**  
**F23** Art. 68A(5)(d) substituted (6.4.2018) by [The Merchant Shipping \(Maritime Labour Convention\) \(Hours of Work\) Regulations 2018 \(S.I. 2018/58\)](#), reg. 1, **Sch. 2 para. 3(a)** (with regs. 3, 4)

### Trustees of occupational pension schemes

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

(2) <sup>F24</sup>... this Article does not apply where the detriment in question amounts to dismissal (within the meaning of<sup>F24</sup> Part XI).

[<sup>F25</sup>(2A) This Article applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).]

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

- F24** 1999 NI 9  
**F25** 1999 NI 11

## Employee representatives

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

- (a) an employee representative for the purposes of Part XIII of this Order or<sup>F26</sup>regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006]<sup>F27</sup> or regulations 9, 13 and 15 of the Service Provision Change (Protection of Employment) Regulations 2006], or
- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

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

<sup>F28</sup>(1A) An employee has the right not to be subjected to any detriment by any act, or by any deliberate failure to act, by his employer done on the ground of his participation in an election of employee representatives for the purposes of Part XIII of this Order or [<sup>F29</sup>regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006]<sup>F30</sup>or regulations 9, 13 and 15 of the Service Provision Change (Protection of Employment) Regulations 2006] .]

(2) <sup>F31</sup> . . . this Article does not apply where the detriment in question amounts to a dismissal (within the meaning of<sup>F31</sup> Part XI)].

- F26** Words in art. 70(1)(a) substituted (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 20(3), **Sch. 2 para. 11(a)** (with reg. 21(1), Sch. 1 para. 3)
- F27** Words in art. 70(1)(a) inserted (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), reg. 20(1), **Sch. 1 para. 2(a)**
- F28** SR 1999/432
- F29** Words in art. 70(1A) substituted (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 20(3), **Sch. 2 para. 11(a)** (with reg. 21(1), Sch. 1 para. 3)
- F30** Words in art. 70(1A) inserted (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), reg. 20(1), **Sch. 1 para. 2(a)**
- F31** 1999 NI 9

## <sup>F32</sup>Employees exercising right to time off work for study or training

**70A.**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer or the principal (within the meaning of Article 91A(3)) done on the ground that, being a person entitled to—

- (a) time off under Article 91A(1) or (3), and
- (b) remuneration under Article 91B(1) in respect of that time taken off,

the employee exercised (or proposed to exercise) that right or received (or sought to receive) such remuneration.

(2) <sup>F33</sup> . . . this Article does not apply where the detriment in question amounts to dismissal (within the meaning of<sup>F33</sup> Part XI)].]

- F32** 1998 NI 15
- F33** 1999 NI 9

### [<sup>F34</sup>Protected disclosures

**70B.**—(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

[  
<sup>F35</sup>(1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

- (a) by another worker of W's employer in the course of that other worker's employment, or
- (b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in paragraph (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of paragraph (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in paragraph (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

- (a) from doing that thing, or
- (b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of paragraph (1A) for doing something that subjects W to detriment if—

- (a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Order, and
- (b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of paragraph (1B).]

(2) <sup>F36</sup>. . . this Article does not apply where—

- (a) the worker is an employee, and
- (b) the detriment in question amounts to dismissal (within the meaning of [<sup>F36</sup> Part XI]).

(3) For the purposes of this Article, and of Articles 71 and 72 so far as relating to this Article, “worker”, “worker's contract”, “employment” and “employer” have the extended meaning given by Article 67K.]

**F34** 1998 NI 17

**F35** Arts. 70B(1A)-(1E) inserted (1.10.2017) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\)](#), ss. **16(1)**, 29(2); S.R. 2017/199, art. 2

**F36** 1999 NI 9

### [<sup>F37</sup>Leave for family and domestic reasons

**70C.**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Department and which relates to—

- (a) pregnancy, childbirth or maternity,  
[ time off under Article 85ZE,]

<sup>F38</sup>(aa)

[ time off under Article 85ZJ or 85ZL,]

<sup>F39</sup>(ab)

(b) ordinary, compulsory or additional maternity leave,

[ ordinary or additional adoption leave,]

<sup>F40</sup>(ba)

[ shared parental leave,]

<sup>F41</sup>(bb)

(c) parental leave,

[<sup>F42</sup>(ca) paternity leave,]

[ parental bereavement leave, or]

<sup>F43</sup>(cb)

(d) time off under Article 85A.

(3) A reason prescribed under this Article in relation to parental leave may relate to action which an employee takes, agrees to take or refuses to take under or in respect of a collective or workforce agreement.

[

<sup>F44</sup>(4) An agency worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the temporary work agency or the hirer done on the ground that—

(a) being a person entitled to the following time off or remuneration, the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration—

(i) time off under Article 85ZA, and

(ii) remuneration under Article 85ZB in respect of that time off,

(b) being a person entitled to time off under Article 85ZG, the agency worker exercised (or proposed to exercise) that right,

(c) being a person entitled to the following time off or remuneration, the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration—

(i) time off under Article 85ZN, and

(ii) remuneration under Article 85ZO in respect of that time off, or

(d) being a person entitled to time off under Article 85ZP, the agency worker exercised (or proposed to exercise) that right.

(5) Paragraph (4) does not apply where the agency worker is an employee.

(6) In this Article, the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3 and 4 of the regulations)—

“agency worker”,

“hirer”,

“temporary work agency”]]

**F37** 1999 NI 9

**F38** Art. 70C(2)(aa) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), ss. **15(4)**, 23(1); S.R. 2015/86, art. 3(1)(l)

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- F39** Art. 70C(2)(ab) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 17(4)**, 23(1); S.R. 2015/86, art. 3(1)(n)
- F40** 2002 NI 2
- F41** Art. 70C(2)(bb) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), **Sch. 1 para. 4(5)(a)**; S.R. 2015/86, art. 3(2)(d)
- F42** Art. 70C(2)(ca) substituted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), **Sch. 1 para. 4(5)(b)**; S.R. 2015/86, art. 4(2)(c) (with art. 7(2))
- F43** Art. 70C(2)(cb) inserted (23.3.2022) by [Parental Bereavement \(Leave and Pay\) Act \(Northern Ireland\) 2022 \(c. 5\)](#), ss. 4, 5(5)(6), **Sch. Pt. 1 para. 18**; S.R. 2022/136, arts. 2, 3
- F44** Arts. 70C(4)-(6) added (15.3.2015 for specified purposes, 5.4.2015 in so far as not already in operation) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 18(2)**, 23(1); S.R. 2015/86, arts. 3(1)(o), 4(1)(f)

.....<sup>F45</sup>

- F45** prosp. in pt. inserted by [2002 c. 21](#) for the purpose of rights conferred on employees by virtue of regulations under s. 25

## [<sup>F46</sup> Flexible working

[<sup>F47</sup>70E].—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee—

- (a) made (or proposed to make) an application under Article 112F,
- (b) exercised (or proposed to exercise) a right conferred on him under Article 112G,
- (c) brought proceedings against the employer under Article 112H, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

(2) This Article does not apply where the detriment in question amounts to dismissal within the meaning of Part XI.]

- F46** 2002 NI 2  
**F47** 2003 NI 15

## Complaints to industrial tribunals

**71.**—(1) An employee may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article [<sup>F48</sup>67M],[<sup>F49</sup>68(1)], [<sup>F50</sup>69, 70]<sup>F51</sup>, 70A<sup>F52</sup>, [<sup>F53</sup>70C(1)] or [<sup>F54</sup>70E]]]].

[<sup>F55</sup>(1YA) A worker may present a complaint to an industrial tribunal that the worker has been subjected to a detriment in contravention of Article 68(1A).]

[<sup>F56</sup>(1ZA) A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 68A.]

[<sup>F57</sup>(1A) A worker may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 70B.]



[<sup>F58</sup>(1AA) An agency worker may present a complaint to an industrial tribunal that the agency worker has been subjected to a detriment in contravention of Article 70C(4) by the temporary work agency or the hirer.]

[<sup>F59</sup>(1B) A person may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of Article 70D.]

(2) [<sup>F57</sup>On a complaint under [<sup>F60</sup>paragraph (1), [<sup>F61</sup>(1YA),] (1ZA), (1A) or (1B)]] it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

[<sup>F62</sup>(2A) On a complaint under paragraph (1AA) it is for the temporary work agency or (as the case may be) the hirer to show the ground on which any act, or deliberate failure to act, was done.]

- (3) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[<sup>F63</sup>(3A) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (3)(a).]

- (4) For the purposes of paragraph (3)—
- (a) where an act extends over a period, the “date of the act” means the last day of that period, and
  - (b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer [<sup>F64</sup>, a temporary work agency or a hirer] shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

- [<sup>F50</sup>(5) In this Article and Article 72 any reference to the employer [<sup>F65</sup>includes—
- (a) where] a person complains that he has been subjected to a detriment in contravention of Article 70A, the principal (within the meaning of Article 91A(3)).

[ in the case of proceedings against a worker or agent under Article 70B(1A), the worker <sup>F66</sup>(b) or agent.]]

- [<sup>F67</sup>(6) In—
- (a) this Article, “agency worker”, and
  - (b) this Article and Article 72, “hirer” and “temporary work agency”,

have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011.]

**F48** 2004 NI 19

**F49** Word in art. 71(1) substituted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, 4(a)

**F50** 1998 NI 15

**F51** 1999 NI 9

**F52** 2002 NI 2

**F53** Word in art. 71(1) substituted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 18(3)(a), 23(1); S.R. 2015/86, art. 3(1)(o)

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- F54** 2003 NI 15
- F55** Art. 71(1YA) inserted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, **4(b)**
- F56** SR 1998/386
- F57** 1998 NI 17
- F58** Art. 71(1AA) inserted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), **ss. 18(3)(b)**, 23(1); S.R. 2015/86, art. 3(1)(o)
- F59** Art. 71(1B) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 27, 61, **Sch. 1 para. 2(3)**; S.I. 2002/1727, **art. 2**
- F60** Words in art. 71(2) substituted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), **ss. 18(3)(c)**, 23(1); S.R. 2015/86, art. 3(1)(o)
- F61** Word in art. 71(2) inserted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, **4(c)**
- F62** Art. 71(2A) inserted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), **ss. 18(3)(d)**, 23(1); S.R. 2015/86, art. 3(1)(o)
- F63** Art. 71(3A) inserted (27.1.2020) by Employment Act (Northern Ireland) 2016 (c. 15), s. 29(2), **Sch. 2 para. 16**; S.R. 2020/1, art. 2(n)
- F64** Words in art. 71(4) inserted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), **ss. 18(3)(e)**, 23(1); S.R. 2015/86, art. 3(1)(o)
- F65** Words in art. 71(5) substituted (1.10.2017) by Employment Act (Northern Ireland) 2016 (c. 15), **ss. 16(2)(a)**, 29(2); S.R. 2017/199, art. 2
- F66** Art. 71(5)(b) inserted (1.10.2017) by Employment Act (Northern Ireland) 2016 (c. 15), **ss. 16(2)(b)**, 29(2); S.R. 2017/199, art. 2
- F67** Art. 71(6) added (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), **ss. 18(3)(f)**, 23(1); S.R. 2015/86, art. 3(1)(o)

#### Modifications etc. (not altering text)

- C1** Art. 71 applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 13(3)** (with reg. 50)
- C2** Art. 71(2)-(4) applied (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, **Sch. para. 8(2)**
- C3** Art. 71(2)-(14) applied (18.8.2006) by virtue of European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 2, 34(2), **Sch. 3 para. 22**
- C4** Art. 71(2)-(4) applied (with modifications) (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 32(2)** (with reg. 39)
- C5** Art. 71(2)-(4) applied (with modifications) (30.6.2012) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 56**, 118(1) (with s. 73); S.R. 2012/266, art. 2(b), Sch. Pt. 2

#### Remedies

**72.**—(1) Where an industrial tribunal finds a complaint under [<sup>F68</sup>Article 71(1), [<sup>F69</sup>(1YA),] (1ZA), (1A) or (1B)] well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

[<sup>F70</sup>(1A) Where an industrial tribunal finds a complaint under Article 71(1AA) well-founded, the tribunal—

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

(b) may make an award of compensation to be paid by the temporary work agency or (as the case may be) the hirer to the complainant in respect of the act or failure to act to which the complaint relates.]

(2) [<sup>F71</sup>Subject to [<sup>F72</sup>paragraphs [<sup>F73</sup>(5ZA),] (5A) and (6)],] the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

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

(3) The loss shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates, and  
(b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.

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

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

[<sup>F74</sup>(5ZA) Where—

(a) the complaint is made under Article 71(1YA),  
(b) the detriment to which the worker is subjected is the termination of the worker's contract, and  
(c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 11 if the worker had been an employee and had been dismissed for the reason specified in Article 132.]

[<sup>F72</sup>(5A) Where—

(a) the complaint is made under Article 71(1ZA),  
(b) the detriment to which the worker is subjected is the termination of his worker's contract, and  
(c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part XI if the worker had been an employee and had been dismissed for the reason specified in Article 132A.]

[<sup>F71</sup>(6) Where—

(a) the complaint is made under Article 71(1A),  
(b) the detriment to which the worker is subject is the termination of his worker's contract, and  
(c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part XI if the worker had been an employee and had been dismissed for the reason specified in Article 134A.]

[<sup>F75</sup>(6A) Where—

(a) the complaint is made under Article 71(1A), and

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(b) it appears to the tribunal that the protected disclosure was not made in good faith, the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.]

[<sup>F76</sup>(7) Where—

- (a) the complaint is made under Article 71(1B) by a person who is not an employee, and
- (b) the detriment to which he is subjected is the termination of his contract with the person who is his employer for the purposes of section 25 of the Tax Credits Act 2002,

any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 11 if the complainant had been an employee and had been dismissed for the reason specified in Article 135B.]

- F68** Words in art. 72(1) substituted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 18(4)(a), 23(1); S.R. 2015/86, art. 3(1)(o)
- F69** Word in art. 72(1) inserted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, 5(a)
- F70** Art. 72(1A) inserted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 18(4)(b), 23(1); S.R. 2015/86, art. 3(1)(o)
- F71** 1998 NI 17
- F72** SR 1998/386
- F73** Word in art. 72(2) inserted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, 5(b)
- F74** Art. 72(5ZA) inserted (31.5.2021) by The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021/103), arts. 1, 5(c)
- F75** Art. 72(6A) inserted (1.10.2017) by Employment Act (Northern Ireland) 2016 (c. 15), ss. 14(4), 29(2); S.R. 2017/199, art. 2
- F76** Art. 72(7) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), ss. 27, 61, Sch. 1 para. 2(4); S.I. 2002/1727, art. 2

#### Modifications etc. (not altering text)

- C6** Art. 72 applied (6.4.2006) by Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (S.R. 2006/48), reg. 17, Sch. para. 8(2)
- C7** Art. 72 applied (with modifications) (30.6.2012) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 56, 118(1) (with s. 73); S.R. 2012/266, art. 2(b), Sch. Pt. 2
- C8** Art. 72(1)-(5) applied (18.8.2006) by European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 2, 34(3), Sch. 3 para. 22
- C9** Art. 72(1)-(5) applied (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 51(2), Sch. 2 paras. 10, 20
- C10** Art. 72(1)-(5) applied (1.10.2009) by European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), reg. 32(3) (with reg. 39)

#### [<sup>F77</sup>Application to police of Article 68 and related provisions

**72A.**—(1) For the purposes of Article 68, and of Articles 71 and 72 so far as relating to that Article, the holding, otherwise than under a contract of employment, of the office of constable -shall be treated as employment by the relevant officer under a contract of employment.

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[<sup>F78</sup>(2) In this Article “the relevant officer”, in relation to a person holding the office of constable, means the person who under Article 47A of the Health and Safety at Work (Northern Ireland) Order 1978 is to be treated as his employer for the purposes of Part II of that Order.]]

**F77** 1997 NI 16

**F78** Art. 72A(2) substituted (25.7.2006 with effect as mentioned in s. 27(4) of the amending Act) by Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), ss. 27(2)(a)(3), 31(1)(f) (with s. 27(5))

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- [Act applied with modifications by S.R. 2023/156 reg. 15](#)

**Whole provisions yet to be inserted into this Order (including any effects on those provisions):**

- [Pt. 7A inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 1](#)
- [Ch. 5 inserted by 2022 c. 27 \(N.I.\) s. 1\(1\)](#)
- [art. 21\(4B\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 2](#)
- [art. 23\(1\)\(zza\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 3](#)
- [art. 70F inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 4](#)
- [art. 70G inserted by 2020 c. 7 Sch. 7 para. 20](#)
- [art. 71\(1C\) inserted by 2020 c. 7 Sch. 7 para. 21\(a\)](#)
- [art. 72\(8\) inserted by 2020 c. 7 Sch. 7 para. 22\(b\)](#)
- [art. 85ZS\(3\)\(a\)-\(c\) substituted for words by 2022 c. 18 \(N.I.\) Sch. 3 para. 47\(4\)](#)
- [art. 95F\(5A\) inserted by 2016 c. 15 \(N.I.\) Sch. 2 para. 32](#)
- [art. 135E inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 6](#)
- [art. 135G inserted by 2020 c. 7 Sch. 7 para. 25](#)
- [art. 137\(6D\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 7](#)
- [art. 137\(7N\) inserted by 2020 c. 7 Sch. 7 para. 26\(b\)](#)
- [art. 140\(3\)\(fj\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 8](#)
- [art. 140\(3\)\(fl\) inserted by 2020 c. 7 Sch. 7 para. 27](#)
- [art. 143\(2\)\(ddd\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 9](#)
- [art. 144\(2\)\(ddd\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 10](#)