
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XI

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

The right

The right

126.—(1) An employee has the right not to be unfairly dismissed by his employer.

(2) Paragraph (1) has effect subject to the following provisions of this Part (in particular Articles 140 to 144).

Dismissal

Circumstances in which an employee is dismissed

127.—(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to paragraph (2) ^{F1} . . . , only if)—

- (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
- [^{F2}(b) he is employed under a limited-term contract that terminates by virtue of the limiting event without being renewed, or]
- (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

- (a) the employer gives notice to the employee to terminate his contract of employment, and
- (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

F1 1999 NI 9

F2 SR 2002/298

Status: Point in time view as at 01/10/2006. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)

- C1** Art. 127(1)(c) restricted (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 2(3), 10(3), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)

Art. 128 rep. by 1999 NI 9

Effective date of termination

129.—(1) Subject to the following provisions of this Article, in this Part “the effective date of termination”

- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,
- (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and
- [^{F3}(c) in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed, means the date on which the termination takes effect.]

(2) Where—

- (a) the contract of employment is terminated by the employer, and
- (b) the notice required by Article 118 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Articles 23(3), 140(1) and 153(1) the later date is the effective date of termination.

(3) In paragraph (2)(b) “the material date” means—

- (a) the date when notice of termination was given by the employer, or
- (b) where no notice was given, the date when the contract of employment was terminated by the employer.

(4) Where—

- (a) the contract of employment is terminated by the employee,
- (b) the material date does not fall during a period of notice given by the employer to terminate that contract, and
- (c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by Article 118 to expire on a date later than the effective date of termination (as defined by paragraph (1)),

for the purposes of Articles 23(3), 140(1) and 153(1) the later date is the effective date of termination.

(5) In paragraph (4) “the material date” means—

- (a) the date when notice of termination was given by the employee, or
- (b) where no notice was given, the date when the contract of employment was terminated by the employee.

Para. (6) rep. by 1999 NI 9

F3 SR 2002/298

Status: Point in time view as at 01/10/2006. This version of this chapter contains provisions that are not valid for this point in time.

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Fairness

General

130.—(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this paragraph if it—
- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - (b) relates to the conduct of the employee,
 - [^{F4}(ba) is retirement of the employee,]
 - (c) is that the employee was redundant, or
 - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under a statutory provision.

[^{F5}(2A) Paragraphs (1) and (2) are subject to Articles 130ZA to 130ZF.]

(3) In paragraph (2)(a)—

- (a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
- (b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

[^{F6}(3A) In any case where the employer has fulfilled the requirements of paragraph (1) by showing that the reason (or the principal reason) for the dismissal is retirement of the employee, the question whether the dismissal is fair or unfair shall be determined in accordance with Article 130ZG.]

(4) [^{F7}In any other case where] the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.

Para. (5) rep. by 1999 NI 9

(6) [^{F8}Paragraph (4) is] subject to Articles [^{F9} 130A] to 139 [^{F10}, 144 and 144A].

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| <p>F4 Art. 130(2)(ba) inserted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), Sch. 7 para. 3(3)(a) (with reg. 50)</p> <p>F5 Art. 130(2A) inserted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), Sch. 7 para. 3(3)(b) (with reg. 50)</p> <p>F6 Art. 130(3A) inserted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), Sch. 7 para. 3(3)(c) (with reg. 50)</p> <p>F7 Words in art. 130(4) substituted (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), Sch. 7 para. 3(3)(d) (with reg. 50)</p> |
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- F8** 1999 NI 9
- F9** 2003 NI 15
- F10** 2004 NI 19

F¹¹ Retirement

- F11** Arts. 130ZA-130ZH and crossheadings preceding and following said arts. inserted (1.10.2006) by The Employment Equality (Age) Regulations (Northern Ireland) (S.R. 2006/261), regs. 1(1), 53(1), {Sch. 7 para. 3(4)}

No normal retirement age: dismissal before 65

130ZA.—(1) This Article applies to the dismissal of an employee if—

- (a) the employee has no normal retirement age, and
- (b) the operative date of termination falls before the date when the employee reaches the age of 65.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

Modifications etc. (not altering text)

- C2** Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)
- C3** Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))
- C4** Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

No normal retirement age: dismissal at or after 65

130ZB.—(1) This Article applies to the dismissal of an employee if—

- (a) the employee has no normal retirement age, and
- (b) the operative date of termination falls on or after the date when the employee reaches the age of 65.

(2) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

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- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and
 - (b) there is an intended date of retirement in relation to the dismissal, but
 - (c) the contract of employment terminates before the intended date of retirement,
- retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, particular regard shall be had to the matters in Article 130ZF when determining the reason (or principal reason) for dismissal.

Modifications etc. (not altering text)

- C5** Arts. 130ZA-130ZH modified (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)
- C6** Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))
- C7** Arts. 130ZA-130ZH applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), **32(3)** (with reg. 50)

Normal retirement age: dismissal before retirement age

130ZC.—(1) This Article applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age, and
 - (b) the operative date of termination falls before the date when the employee reaches the normal retirement age.
- (2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

Modifications etc. (not altering text)

- C8** Arts. 130ZA-130ZH modified (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)
- C9** Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))
- C10** Arts. 130ZA-130ZH applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), **32(3)** (with reg. 50)

Normal retirement age 65 or higher: dismissal at or after retirement age

130ZD.—(1) This Article applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age,
 - (b) the normal retirement age is 65 or higher, and
 - (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.
- (2) In a case where—
- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

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(b) the contract of employment terminates on the intended date of retirement, retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

(a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, but

(b) the contract of employment terminates before the intended date of retirement, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

(a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

(b) there is an intended date of retirement in relation to the dismissal, but

(c) the contract of employment terminates before the intended date of retirement, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, particular regard shall be had to the matters in Article 130ZF when determining the reason (or principal reason) for dismissal.

Modifications etc. (not altering text)

C11 Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

C12 Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))

C13 Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Normal retirement age below 65: dismissal at or after retirement age

130ZE.—(1) This Article applies to the dismissal of an employee if—

(a) the employee has a normal retirement age,

(b) the normal retirement age is below 65, and

(c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

(2) If it is unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(3) Paragraphs (4) to (7) apply if it is not unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age.

(4) In a case where—

(a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and

(b) the contract of employment terminates on the intended date of retirement,

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retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.

(5) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(6) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(7) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 5 to the 2006 Regulations, particular regard shall be had to the matters in Article 130ZF when determining the reason (or principal reason) for dismissal.

Modifications etc. (not altering text)

- C14** Arts. 130ZA-130ZH modified (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006](#) (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)
- C15** Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006](#) (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))
- C16** Arts. 130ZA-130ZH applied (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006](#) (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Reason for dismissal: particular matters

130ZF.—(1) These are the matters to which particular regard is to be had in accordance with Article 130ZB(5), 130ZD(5) or 130ZE(7)—

- (a) whether or not the employer has notified the employee in accordance with paragraph 4 of Schedule 5 to the 2006 Regulations,
- (b) if the employer has notified the employee in accordance with that paragraph, how long before the notified retirement date the notification was given,
- (c) whether or not the employer has followed, or sought to follow, the procedures in paragraph 7 of Schedule 5 to the 2006 Regulations.

(2) In paragraph (1)(b), “notified retirement date” means the date notified to the employee in accordance with paragraph 4 of Schedule 5 to the 2006 Regulations as the date on which the employer intends to retire the employee.

Modifications etc. (not altering text)

- C17** Arts. 130ZA-130ZH modified (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006](#) (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

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- C18** Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))
- C19** Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Retirement dismissals: fairness

130ZG.—(1) This Article applies if the reason (or principal reason) for a dismissal is retirement of the employee.

(2) The employee shall be regarded as unfairly dismissed if, and only if, there has been a failure on the part of the employer to comply with an obligation imposed on him by any of the following provisions of Schedule 5 to the 2006 Regulations—

- (a) paragraph 4 (notification of retirement, if not already given under paragraph 2),
- (b) paragraphs 6 and 7 (duty to consider employee's request not to be retired),
- (c) paragraph 8 (duty to consider appeal against decision to refuse request not to be retired).

Modifications etc. (not altering text)

- C20** Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)
- C21** Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))
- C22** Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Interpretation

130ZH. In Articles 130ZA to 130ZG—

“the 2006 Regulations” means the Employment Equality (Age) Regulations (Northern Ireland) 2006;

“intended date of retirement” means the date which, by virtue of paragraph 1(2) of Schedule 5 to the 2006 Regulations, is the intended date of retirement in relation to a particular dismissal;

“normal retirement age”, in relation to an employee, means the age at which employees in the employer's undertaking who hold, or have held, the same kind of position as the employee are normally required to retire;

“operative date of termination” means—

- (a) where the employer terminates the employee's contract of employment by notice, the date on which the notice expires, or
- (b) where the employer terminates the contract of employment without notice, the date on which the termination takes effect.

Modifications etc. (not altering text)

- C23** Arts. 130ZA-130ZH modified (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 51, **Sch. 5 para. 10(4)** (with reg. 50)

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- C24** Arts. 130ZA-130ZH applied by S.R. 2004/521, reg. 4(1)(h) (as added (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53(1), **Sch. 7 para. 14(2)(b)** (with reg. 50))
- C25** Arts. 130ZA-130ZH applied (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), **32(3)** (with reg. 50)

Other Dismissals]

[^{F12X1} **Procedural fairness**

130A.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) one of the procedures set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003 (dismissal and disciplinary procedures) applies in relation to the dismissal,
- (b) the procedure has not been completed, and
- (c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.

(2) Subject to paragraph (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of Article 130(4)(a) as by itself making the employer's action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.

(3) For the purposes of this Article, any question as to the application of a procedure set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003, completion of such a procedure or failure to comply with the requirements of such a procedure shall be determined by reference to regulations under Article 17 of that Order.]

Editorial Information

X1 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F12 [2003 NI 15](#)

[^{F13X2} **Jury service**

130B.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) has been summoned under the Juries (Northern Ireland) Order 1974 or the Coroners Act (Northern Ireland) 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) Paragraph (1) does not apply in relation to an employee who is dismissed if the employer shows—

- (a) that the circumstances were such that the employee's absence in pursuance of being so summoned was likely to cause substantial injury to the employer's undertaking,
- (b) that the employer brought those circumstances to the attention of the employee,

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- (c) that the employee refused or failed to apply to be excused from attending in pursuance of being so summoned, and
- (d) that the refusal or failure was not reasonable]

Editorial Information

X2 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F13 2004 NI 19

[^{F14X3} Leave for family reasons

131.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a prescribed kind, or
- (b) the dismissal takes place in prescribed circumstances.

(2) In this Article “prescribed” means prescribed by regulations made by the Department.

(3) A reason or set of circumstances prescribed under this Article must relate to—

- (a) pregnancy, childbirth or maternity,
- (b) ordinary, compulsory or additional maternity leave,
- [ordinary or additional adoption leave,]

^{F15}(ba)

- (c) parental leave,
- [paternity leave, or]

^{F15}(ca)

- (d) time off under Article 85A;

and it may also relate to redundancy or other factors.

(4) A reason or set of circumstances prescribed under paragraph (1) satisfies paragraph (3)(c) if it relates to action which an employee—

- (a) takes,
- (b) agrees to take, or
- (c) refuses to take,

under or in respect of a collective or workforce agreement which deals with parental leave.

(5) Regulations under this Article may apply any statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this Article]

Editorial Information

X3 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

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F14 1999 NI 9

F15 2002 NI 2

^{X4}Health and safety cases

132.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

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

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

[^{F16}(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 employees 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,
- (d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or
- (e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

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

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in paragraph (1)(e), he shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have dismissed him for taking (or proposing to take) them.

Status: Point in time view as at 01/10/2006. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Editorial Information

- X4** The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading
- F16** SR 1996/511

[^{F17X5}Working time cases

132A.—[

^{F18}(1)] An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations (Northern Ireland) 1998,
- (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, or
- (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.

[
^{F18}(2) A reference in this Article to the Working Time Regulations (Northern Ireland) 1998 includes a reference to

[the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.
^{F19}(a)]

[the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.]]]
^{F19}(b)

Editorial Information

- X5** The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading
- F17** SR 1998/386
- F18** SI 2003/3049
- F19** SI 2004/1713

Status: Point in time view as at 01/10/2006. This version of this chapter contains provisions that are not valid for this point in time.

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^{X6} Trustees of occupational pension schemes

133.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

[^{F20}(1A) 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).]

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

Editorial Information

X6 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F20 1999 NI 11

^{X7} Employee representatives

134.—[^{F21}(1)] An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee, being—

- (a) an employee representative for the purposes of Part XIII of this Order or [^{F22}regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006] [^{F23}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,

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

[^{F21}(2) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee took part in an election of employee representatives for the purposes of Part XIII of this Order or [^{F24}regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006] [^{F25}or regulations 9, 13 and 15 of the Service Provision Change (Protection of Employment) Regulations 2006].]

Editorial Information

X7 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F21 SR 1999/432

Status: Point in time view as at 01/10/2006. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- F22** Words in art. 134(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(c)** (with reg. 21(1), Sch. 1 para. 3)
- F23** Words in art. 134(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(c)**
- F24** Words in art. 134(2) substituted (6.4.2006) by Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), reg. 20(3), **Sch. 2 para. 11(c)** (with reg. 21(1), Sch. 1 para. 3)
- F25** Words in art. 134(2) 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(c)**

^{F26X8} Protected disclosure

134A. An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.]

Editorial Information

- X8** The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading
- F26** 1998 NI 17

^{x9} Assertion of statutory right

135.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or
 - (b) alleged that the employer had infringed a right of his which is a relevant statutory right.
- (2) It is immaterial for the purposes of paragraph (1)—
- (a) whether or not the employee has the right, or
 - (b) whether or not the right has been infringed;

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

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

(4) The following are relevant statutory rights for the purposes of this Article—

- (a) any right conferred by this Order^{F27} or Schedule 2 to the Shops (Sunday Trading & c.) (Northern Ireland) Order 1997]^{F28} or Schedule 8A to the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985] for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal,
- (b) the right conferred by Article 118 of this Order,^{F29} . . .
- (c) the rights conferred by Articles 35 and 60 of the Trade Union and Labour Relations Order (deductions from pay)^{F30} . . .

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- [^{F31}(d) the rights conferred by the Working Time Regulations (Northern Ireland) 1998, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003 or the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.][^{F32}, and
- (e) the rights conferred by the Transfer of Undertakings (Protection of Employment) Regulations 2006.]

[^{F33}(5) In this Article any reference to an employer includes, where the right in question is conferred by Article 91A, the principal (within the meaning of Article 91A(3)).]

Editorial Information

- X9** The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading
- F27** 1997 NI 20
- F28** 1985 NI 11 as inserted by 2004 NI 1
- F29** SR 1998/386
- F30** Word in art. 135(4)(c) omitted (6.4.2006) by virtue of [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), **19(a)**, Sch. 1 para. 11 (with reg. 21(1), Sch. 1 para. 3)
- F31** SI 2004/1713
- F32** Art. 135(4)(e) and preceding words inserted (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), **19(b)**, Sch. 1 para. 11 (with reg. 21(1), Sch. 1 para. 3)
- F33** 1998 NI 15

[^{F34X10}The national minimum wage

135A.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

- (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies; or
- (b) the employer was prosecuted for an offence under section 31 of the National Minimum Wage Act 1998 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this Article applies; or
- (c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.
- (2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—
- (a) whether or not the employee has the right, or
- (b) whether or not the right has been infringed; but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.
- (3) The following are the rights to which this Article applies—
- (a) any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an industrial tribunal, and

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- (b) any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration).]

Editorial Information

X10 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F34 [1998 c. 39](#)

[^{F35X11F36} Tax credit

135B.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

- (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 6(2)(a) or (c) of the Tax Credits Act 1999;
 - (b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under section 9 of that Act, as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right; or
 - (c) the employee is entitled, or will or may be entitled, to working families' tax credit or disabled person's tax credit.
- (2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—
- (a) whether or not the employee has the right, or
 - (b) whether or not the right has been infringed;

but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.]

Editorial Information

X11 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F35 [1999 c. 10](#)

F36 prosp. in pt. subst. by [2002 c. 21](#) for the purpose of rights conferred on employees by virtue of regulations under s. 25

[^{F37X12} Flexible working

135C. An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) 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

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- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.]

Editorial Information

X12 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F37 [2002 NI 2](#)

VALID FROM 30/06/2012

[^{F38}Pension enrolment

135D.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

- (a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the employee a requirement to which this Article applies;
 - (b) the employer was prosecuted for an offence under section 45 of the Pensions (No. 2) Act (Northern Ireland) 2008 as a result of action taken for the purposes of enforcing in favour of the employee a requirement to which this Article applies; or
 - (c) any provision of Chapter 1 of that Part of that Act applies to the employee, or will or might apply.
- (2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—
- (a) whether or not the requirement applies in favour of the employee, or
 - (b) whether or not the requirement has been contravened,

but, for that paragraph to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.

(3) This Article applies to any requirement imposed on the employer by or under any provision of Chapter 1 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008.

(4) In this Article references to enforcing a requirement include references to securing its benefit in any way.]

F38 [Art. 135D](#) inserted (prosp.) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), [ss. 57\(2\)](#), [118\(1\)](#) (with [s. 73](#))

^{X13}Trade union membership or activities

136.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for his dismissal is that the employee—

- (a) was, or proposed to become, a member of an independent trade union,^{F39} . . .
- (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time,^{F39} . . .

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- [^{F39}(ba) had made use, or proposed to make use, of trade union services at an appropriate time,
- (bb) had failed to accept an offer made in contravention of Article 77A or 77B, or]
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.
- (2) In paragraph[^{F39} (1)] “an appropriate time” means—
- (a) a time outside the employee's working hours, or
- (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union[^{F39} or (as the case may be) make use of trade union services];
- and for this purpose “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

[^{F39}(2A) In this Article—

- (a) “trade union services” means services made available to the employee by an independent trade union by virtue of his membership of the union, and
- (b) references to an employee's “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(2B) Where the reason or one of the reasons for the dismissal was that an independent trade union (with or without the employee's consent) raised a matter on behalf of the employee as one of its members, the reason shall be treated as falling within paragraph (1)(ba).]

(3) Where the reason, or one of the reasons, for the dismissal was —

- (a) the employee's refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments, or
- (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in sub-paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

the reason shall be treated as falling within paragraph (1)(c).

(4) References in this Article to being or becoming a member of a trade union include references to being or becoming a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union^{F39}. . . .

[^{F39}(5) References in this Article—

- (a) to taking part in the activities of a trade union, and
- (b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (4).]

Editorial Information

X13 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F39 [2004 NI 19](#)

^{X14}Redundancy

137.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

^[F40F41](c) it is shown that any of paragraphs (2A) to (7G) apply.]

Para. (2) rep. by 1999 NI 9

^[F42](2A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 130B (unless the case is one to which paragraph (2) of that Article applies).]

(3) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article).

^[F43](3A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 132A.]

(4) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 133(1).

(5) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 134.

^[F44](5A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 134A.]

(6) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article).

^[F45](6A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135A (read with paragraph (2) of that Article).]

^[F46F47](6B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135B (read with paragraph (2) of that Article).]

^[F42](6C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 135C.]

(7) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 136(1) (read with paragraph (3) of that Article).

^[F48](7A) This paragraph applies if—

- (a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the reason mentioned in Article 144A (participation in official industrial action), and
- (b) paragraph (3), (4) or (5) of that Article applies to the dismissal.]

^[F49](7B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 28

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of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation).]

[^{F50}(7C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 (unless the case is one to which paragraph (4) of that regulation applies).]

[^{F51}(7D) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 (unless the case is one to which paragraph (4) of that regulation applies).]

[^{F52}(7E) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (read with paragraphs (4) and (7) of that regulation).]

[^{F53}(7F) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (read with paragraphs (4) and (7) of that regulation).]

[^{F54}(7G) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (read with paragraph 5(6) of that Schedule).]

[^{F55}(7G) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation)]

(8) In this Part “redundancy case” means a case where sub-paragraphs (a) and (b) of paragraph (1) of this Article are satisfied.

Editorial Information

- X14** The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading
- F40** [Art. 137\(1\)\(c\)](#) substituted (6.4.2006) by [Occupational and Personal Pension Schemes \(Consultation by Employers\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/48\)](#), reg. 17, **Sch. para. 6(2)(a)**
- F41** By [European Cooperative Society \(Involvement of Employees\) Regulations 2006 \(S.I. 2006/2059\)](#), **regs. 2(2), 32(1)(a)** (in their application in relation to Northern Ireland subject to the modifications in {Sch. 3 para. 11}) it is provided (18.8.2006) that in art. 137(1)(c) for "7F" there be substituted "7G"
- F42** [2004 NI 19](#)
- F43** [SR 1998/386](#)
- F44** [1998 NI 17](#)
- F45** [1998 c. 39](#)
- F46** [1999 c. 10](#)
- F47** [Art. 137\(6B\)](#) insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by [Tax Credits Act 2002 \(c. 21\)](#), ss. 27, 61, **Sch. 1 para. 4(3)**; S.I. 2002/1727, **art. 2**
- F48** [1999 NI 9](#)
- F49** [SI 1999/3323](#)

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- F50** SR 2000/219
- F51** SR 2002/298
- F52** SR 2004/417
- F53** SR 2005/47
- F54** [Art. 137\(7G\)](#) inserted (6.4.2006) by [Occupational and Personal Pension Schemes \(Consultation by Employers\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/48\)](#), reg. 17, **Sch. para. 6(2)(b)**
- F55** [Art. 137\(7G\)](#) inserted (18.8.2006) by virtue of [European Cooperative Society \(Involvement of Employees\) Regulations 2006 \(S.I. 2006/2059\)](#), **regs. 2(2), 32(1)(b)** (in their application in relation to Northern Ireland subject to the modifications in {Sch. 3 para. 11})

^{X15}Replacements

138.—(1) Where this Article applies to an employee he shall be regarded for the purposes of Article 130(1)(b) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) This Article applies to an employee where—

- (a) on engaging him the employer informs him in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth,^{F56} or on adoption leave] and
- (b) the employer dismisses him in order to make it possible to give work to the other employee.

(3) This Article also applies to an employee where—

- (a) on engaging him the employer informs him in writing that his employment will be terminated on the end of a suspension of another employee from work on medical grounds or maternity grounds (within the meaning of Part VIII), and
- (b) the employer dismisses him in order to make it possible to allow the resumption of work by the other employee.

(4) Paragraph (1) does not affect the operation of Article 130(4) in a case to which this Article applies.

Editorial Information

X15 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

F56 [2002 NI 2](#)

^{X16}Pressure on employer to dismiss unfairly

139.—(1) This Article applies where there falls to be determined for the purposes of this Part a question—

- (a) as to the reason, or principal reason, for which an employee was dismissed,
- (b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of Article 130(1)(b), or
- (c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing him.

(2) In determining the question no account shall be taken of any pressure which by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was

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exercised on the employer to dismiss the employee; and the question shall be determined as if no such pressure had been exercised.

Editorial Information

X16 The insertion of the new arts. 130ZA-130ZH preceded by new "Retirement" crossheading and followed by new "Other Dismissals" crossheading on 1.10.2006 gives rise to a change in the structure of this Order on legislation.gov.uk which breaks the continuity of historical versions of the existing provisions which are brought under new "Other Dismissals" crossheading

Exclusion of right

Qualifying period of employment

140.—(1) Article 126 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than^{F57} one year] ending with the effective date of termination.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in Article 96(2), paragraph (1) has effect in relation to that dismissal as if for the words^{F57} one year] there were substituted the words “one month”.

(3) Paragraph (1) does not apply if—
Sub#para. (a) rep. by 1999 NI 9

- [^{F58}(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies,]
- [^{F58}(b) paragraph (1) of Article 131 (read with any regulations made under that Article) applies,]
- (c) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,
- [^{F59}(cc) Article 132A applies,]
- (d) Article 133 applies,
- (e) Article 134 applies,
- [^{F60}(ee) Article 134A applies,]
- (f) paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article) applies,
- [^{F61}(ff) paragraph (1) of Article 135A (read with paragraph (2) of that Article) applies,]
- [^{F62F63}(fg) paragraph (1) of Article 135B (read with paragraph (2) of that Article) applies,]
- [^{F64}(fh) Article 135C applies;]
- (g) Article 136 applies, or
- (h) Article 137 applies^{F65}. . .
- [^{F66}(j) Article 144A applies^{F67}. . .]
- [^{F68}(k) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulations) applies^{F69}. . .]
- [^{F67}(l) paragraph (1) of regulation 7 of the Part#time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 applies.^{F70}. . .]
- [^{F69}(m) paragraph (1) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 applies.^{F71}. . .]

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- [^{F70}(n) paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 applies.^{F72} . . .]
- [^{F71}(o) paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (read with paragraphs (4) and (7) of that regulation) applies.][^{F73F74} . . .
- (p) paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 applies][^{F75}, or
 - (p) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (read with paragraph 5(6) of that Schedule) applies.][^{F76} or
 - (q) head (a) or (b) of paragraph 13(5) of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 applies.]

- F57** SR 1999/277
- F58** 2004 NI 19
- F59** SR 1998/386
- F60** 1998 NI 17
- F61** 1998 c. 39
- F62** 1999 c. 10
- F63** Art. 140(3)(fg) insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by [Tax Credits Act 2002 \(c. 21\)](#), s. 27, [Sch. 1 para. 4\(4\)](#); S.I. 2002/1727, [art. 2](#)
- F64** 2003 NI 15
- F65** SI 1999/3323
- F66** 1999 NI 9
- F67** SR 2000/219
- F68** SI 1999/2232
- F69** SR 2002/298
- F70** SR 2004/417
- F71** SR 2005/47
- F72** Word in [art. 140\(3\)\(n\)](#) omitted (6.4.2006) by virtue of [Occupational and Personal Pension Schemes \(Consultation by Employers\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/48\)](#), reg. 17, [Sch. para. 6\(3\)\(a\)](#)
- F73** Art. 140(3)(p) and preceding word inserted (18.8.2006) by virtue of [European Cooperative Society \(Involvement of Employees\) Regulations 2006 \(S.I. 2006/2059\)](#), [regs. 2\(2\)](#), 32(2)(b) (in their application in relation to Northern Ireland subject to the modifications in {[Sch. 3 para. 11](#)})
- F74** Word in [art. 140\(3\)\(o\)](#) repealed (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 53, [Sch. 7 para. 3\(5\)\(a\)](#), [Sch. 8\(1\)](#) (with reg. 50)
- F75** Art. 140(3)(p) and preceding words inserted (6.4.2006) by [Occupational and Personal Pension Schemes \(Consultation by Employers\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/48\)](#), reg. 17, [Sch. para. 6\(3\)\(b\)](#)
- F76** Art. 140(3)(q) and preceding word inserted (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 53(1), [Sch. 7 para. 3\(5\)\(b\)](#) (with reg. 50)

Upper age limit

141. ^{F77}

F77 Art. 141 repealed (1.10.2006) by [Employment Equality \(Age\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/261\)](#), regs. 1(1), 53, [Sch. 7 para. 3\(6\)](#), [Sch. 8\(1\)](#) (with reg. 50)

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Dismissal procedures agreements

142.—(1) Where a dismissal procedures agreement is designated by an order under paragraph (3) which is for the time being in force—

- (a) the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under Article 126, and
- (b) accordingly, Article 126 does not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.

[^{F78}(2) But if the agreement includes provision that it does not apply to dismissals of particular descriptions, paragraph (1) does not apply in relation to a dismissal of any such description.]

(3) An order designating a dismissal procedures agreement may be made by the Department, on an application being made to it jointly by all the parties to the agreement, if it is satisfied that—

- (a) every trade union which is a party to the agreement is an independent trade union,
- (b) the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed,
- (c) those procedures are available without discrimination to all employees falling within any description to which the agreement applies,
- (d) the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part,
- [^{F78}(e) the agreement includes provision either for arbitration in every case or for—
 - (i) arbitration where (by reason of equality of votes or for any other reason) a decision under the agreement cannot otherwise be reached, and
 - (ii) a right to submit to arbitration any question of law arising out of such a decision, and]
 - (f) the provisions of the agreement are such that it can be determined with reasonable certainty whether or not a particular employee is one to whom the agreement applies.

[^{F79}(4) If at any time when an order under paragraph (3) is in force in relation to a dismissal procedures agreement the Department is satisfied, whether on an application made to it by any of the parties to the agreement or otherwise, either—

- (a) that it is the desire of all the parties to the agreement that the order should be revoked, or
- (b) that the agreement no longer satisfies all the conditions specified in paragraph (3),

the Department shall revoke the order by an order under this paragraph.

(5) The transitional provisions which may be made in an order under paragraph (4) include, in particular, provisions directing—

- (a) that an employee—
 - (i) shall not be excluded from his right under Article 126 where the effective date of termination falls within a transitional period which ends with the date on which the order takes effect and which is specified in the order, and
 - (ii) shall have an extended time for presenting a complaint under Article 145 in respect of a dismissal where the effective date of termination falls within that period, and
- (b) that, where the effective date of termination falls within such a transitional period, an industrial tribunal shall, in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, have regard to such considerations as are specified in the order (in addition to those specified in this Part and Article 12(4) and (5) of the Industrial Tribunals (Northern Ireland) Order 1996).

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[^{F78}(6) Where an award is made under a designed dismissal procedures agreement it may be enforced, by leave of a county court, in the same manner as a judgement of the court to the same effect and, where leave is given, judgement may be entered in terms of the award.]

F78 1998 NI 8

F79 prosp. insertion by 2003 NI 15

Dismissal of those taking part in unofficial industrial action

143.—(1) Article 126 does not apply to the dismissal of an employee if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.

(2) Paragraph (1) does not apply if—

[^{F80}(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;]

[^{F81}(a) Article 131 applies;]

(b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,

[^{F82}(bb) Article 132A(d) applies,]

(c) Article 134 applies,

[^{F83}(cc) Article 134A applies;]

[^{F81}(ccc) Article 135 applies in relation to time off under Article 85A;]

Sub#para. (d) rep. by 1999 NI 9

[^{F80}(d) Article 135C applies;]

(e) Article 137(1) and (3) applies, or

(f) Article 137(1) and (5) applies.

(3) A strike or other industrial action is unofficial in relation to an employee unless—

(a) he is a member of a trade union and the action is authorised or endorsed by that union, or

(b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed;

but a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

(4) The provisions of Article 21(2) of the 1992 Order apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.

(5) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal; but where an act is repudiated as mentioned in Article 21A of the 1992 Order, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

(6) In this Article the “time of dismissal” means—

(a) where the employee's contract of employment is terminated by notice, when the notice is given,

(b) where the employee's contract of employment is terminated without notice, when the termination takes effect, and

(c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a “working day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

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(7) For the purposes of this Article membership of a trade union 7 for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is unofficial in relation to him or another notwithstanding that II he may in fact have ceased to be a member.

F80 2004 NI 19
F81 1999 NI 9
F82 SR 1998/386
F83 1998 NI 17

Dismissals in connection with other industrial action

144.—(1) This Article applies in relation to an employee who has a right to complain of unfair dismissal (the “complainant”) and who claims to have been unfairly dismissed, where at the date of the dismissal—

- (a) the employer was conducting or instituting a lock-out, or
- (b) the complainant was taking part in a strike or other industrial action.

(2) This Article does not apply if—

[^{F84}(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;]

[^{F85}(a) Article 131 applies;]

(b) paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article) applies,

[^{F86}(bb) Article 132A(d) applies,]

(c) Article 134 applies,

[^{F85}(cc) Article 135 applies in relation to time off under Article 85A;]

[^{F84}(d) Article 135C applies;]

(e) Article 137(1) and (3) applies, or

(f) Article 137(1) and (5) applies.

[^{F85}(2A) This Article does not apply in relation to an employee who is regarded as unfairly dismissed by virtue of Article 144A.]

(3) In a case where this Article applies an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—

- (a) that one or more relevant employees of the same employer have not been dismissed, or
- (b) that a relevant employee has before the expiry of the period of three months beginning with the date of his dismissal been offered re-engagement and that the complainant has not been offered re-engagement.

(4) For this purpose “relevant employees” means—

- (a) in relation to a lock-out, employees who were directly interested in the dispute in contemplation or furtherance of which the lock-out occurred, and
- (b) in relation to a strike or other industrial action, those employees at the establishment of the employer at or from which the complainant works who at the date of his dismissal were taking part in the action.

(5) Nothing in Article 143 affects the question who are relevant employees for the purposes of this Article.

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(6) An offer of re-engagement means an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

(7) In this Article “date of dismissal” means—

- (a) where the employee's contract of employment was terminated by notice, the date on which the employer's notice was given, and
- (b) in any other case, the effective date of termination.

(8) Article 145(2) does not apply in relation to a complaint to which this Article^{F85} or Article 144A] applies, but an industrial tribunal shall not consider such a complaint unless it is presented—

- (a) before the end of the period of six months beginning with the date of the complainant's dismissal; or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of six months.

(9) Where it is shown that the condition referred to in paragraph (3)(b) is fulfilled the references in Articles 130 to 138 to the reason or principal reason for which the complainant was dismissed shall be read as references to the reason or principal reason he has not been offered re-engagement.

F84 2004 NI 19

F85 1999 NI 9

F86 SR 1998/386

[^{F87}Participation in official industrial action

144A.—(1) For the purposes of this Article an employee takes protected industrial action if he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of Article 97 of the Trade Union and Labour Relations Order is not actionable in tort.

(2) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action, and
- (b) paragraph (3), (4) or (5) applies to the dismissal.

(3) This paragraph applies to a dismissal if^{F88} the date of the dismissal is]^{F88} within the protected period.]

(4) This paragraph applies to a dismissal if—

- (a) [^{F88}the date of the dismissal is] after the end of that period, and
- (b) the employee had stopped taking protected industrial action before the end of that period.

(5) This paragraph applies to a dismissal if—

- (a) [^{F88}the date of the dismissal is] after the end of that period,
- (b) the employee had not stopped taking protected industrial action before the end of that period, and
- (c) the employer had not taken such procedural steps as would have been reasonable for the purposes of resolving the dispute to which the protected industrial action relates.

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(6) In determining whether an employer has taken those steps regard shall be had, in particular, to—

- (a) whether the employer or a union had complied with procedures established by any applicable collective or other agreement;
- (b) whether the employer or a union offered or agreed to commence or resume negotiations after the start of the protected industrial action;
- (c) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that conciliation services be used;
- (d) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that mediation services be used in relation to procedures to be adopted for the purposes of resolving the dispute.

[where there was agreement to use either of the services mentioned in sub-paragraphs (c) ^{F88}(e) and (d), the matters specified in Article 144B.]

(7) In determining whether an employer has taken those steps no regard shall be had to the merits of the dispute.

[^{F88}(7A) For the purposes of this Article “the protected period”, in relation to the dismissal of an employee, is the sum of the basic period and any extension period in relation to that employee.

(7B) The basic period is 12 weeks beginning with the first day of protected industrial action.

(7C) An extension period in relation to an employee is a period equal to the number of days falling on or after the first day of protected industrial action (but before the protected period ends) during the whole or any part of which the employee is locked out by his employer.

(7D) In paragraphs (7B) and (7C), the “first day of protected industrial action” means the day on which the employee starts to take protected industrial action (even if on that day he is locked out by his employer).]

(8) For the purposes of this Article no account shall be taken of the repudiation of any act by a trade union as mentioned in Article 21A of the Industrial Relations (Northern Ireland) Order 1992 in relation to anything which occurs before the end of the next working day (within the meaning of Article 143) after the day on which the repudiation takes place.

(9) In relation to a complaint under Article 145 that a dismissal was unfair by virtue of this Article—

- (a) no order shall be made under Article 147 (reinstatement or re-engagement) until after the conclusion of protected industrial action by any employee in relation to the relevant dispute,
- (b) regulations under Article 9 of the Industrial Tribunals (Northern Ireland) Order 1996 may make provision about the adjournment and renewal of applications (including provision requiring adjournment in specified circumstances), and
- (c) regulations under Article 11 of that Order may require a pre-hearing review to be carried out in specified circumstances.

[^{F89}(10) In this Article “date of dismissal” has the meaning given by Article 144(7).]

F87 1999 NI 9
F88 2004 NI 19
F89 2004 NI 19

[^{F90}Conciliation and mediation: supplementary provisions

144B.—(1) The matters referred to in paragraph (6)(e) of Article 144A are those specified in paragraphs (2) to (5); and references in this Article to “the service provider” are to any person who provided a service mentioned in paragraph (6)(c) or (d) of that Article.

(2) The first matter is: whether, at meetings arranged by the service provider, the employer or, as the case may be, a union was represented by an appropriate person.

(3) The second matter is: whether the employer or a union, so far as requested to do so, co-operated in the making of arrangements for meetings to be held with the service provider.

(4) The third matter is: whether the employer or a union fulfilled any commitment given by it during the provision of the service to take particular action.

(5) The fourth matter is: whether, at meetings arranged by the service provider between the parties making use of the service, the representatives of the employer or a union answered any reasonable question put to them concerning the matter subject to conciliation or mediation.

(6) For the purposes of paragraph (2) an “appropriate person” is—

(a) in relation to the employer—

(i) a person with the authority to settle the matter subject to conciliation or mediation on behalf of the employer, or

(ii) a person authorised by a person of that type to make recommendations to him with regard to the settlement of that matter, and

(b) in relation to a union, a person who is responsible for handling on the union's behalf the matter subject to conciliation or mediation.

(7) For the purposes of paragraph (4) regard may be had to any timetable which was agreed for the taking of the action in question or, if no timetable was agreed, to how long it was before the action was taken.

(8) In any proceedings in which regard must be had to the matters referred to in Article 144A(6)(e)—

(a) notes taken by or on behalf of the service provider shall not be admissible in evidence;

(b) the service provider must refuse to give evidence as to anything communicated to him in connection with the performance of his functions as a conciliator or mediator if, in his opinion, to give the evidence would involve his making a damaging disclosure; and

(c) the service provider may refuse to give evidence as to whether, for the purposes of paragraph (5), a particular question was or was not a reasonable one.

(9) For the purposes of paragraph (8)(b) a “damaging disclosure” is—

(a) a disclosure of information which is commercially sensitive, or

(b) a disclosure of information that has not previously been disclosed which relates to a position taken by a party using the conciliation or mediation service on the settlement of the matter subject to conciliation or mediation,

to which the person who communicated the information to the service provider has not consented.]

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