

STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XI

UNFAIR DISMISSAL

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

Compensation

General

152.—(1) ^{F1} . . . Where a tribunal makes an award of compensation for unfair dismissal under Article 146(4) or 151(3)(a) the award shall consist of—

- (a) a basic award (calculated in accordance with Articles 153 to 156, 160 and 161), and
- (b) a compensatory award (calculated in accordance with Articles 157, 158^{F2}, 158A], 160^{F1} and 161^{F3}. . .]).

Paras. (2), (3) rep. by 1999 NI 9

Para. (4) rep. by 2003 NI 15

F1 1999 NI 9

F2 Words in art. 152(1)(b) inserted (15.1.2006) by [Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2005 \(S.I. 2005/3424 \(N.I. 20\)\)](#), [arts. 1\(2\), 5\(2\)](#)

F3 2003 NI 15

Basic award

153.—(1) Subject to the provisions of this Article, Articles 154 to 156 and Articles 160 and 161, the amount of the basic award shall be calculated by—

- (a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,
- (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
- (c) allowing the appropriate amount for each of those years of employment.

(2) In paragraph (1)(c) “the appropriate amount” means—

- (a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,
- (b) one week's pay for a year of employment (not within sub-paragraph (a)) in which he was not below the age of twenty-two, and

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(c) half a week's pay for a year of employment not within sub-paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under paragraph (1), no account shall be taken under that paragraph of any year of employment earlier than those twenty years.

(4) ^{F4}

(5) ^{F4}

Para. (6) rep. by 1999 NI 9

F4 Art. 153(4)(5) repealed (1.10.2006) by Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261), regs. 1(1), 53, Sch. 7 para. 3(8), **Sch. 8(1)** (with reg. 50)

Basic award: minimum in certain cases

154.—(1) The amount of the basic award (before any reduction under Article 156) shall not be less than [^{F5}£8,139] where the reason (or, if more than one, the principal reason)—

- (a) in a redundancy case, for selecting the employee for dismissal, or
- (b) otherwise, for the dismissal,

is one of those specified in Article 132(1)(a) and (b), [^{F6} 132A(d),] 133(1), 134 or 136(1).

[^{F7}(1A) Where—

- (a) an employee is regarded as unfairly dismissed by virtue of Article ^{F8} . . . 130A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason),
- (b) an award of compensation falls to be made under Article 146(4), and
- (c) the amount of the award under Article 152(1)(a), before any reduction under Article 156(3A) or (4), is less than the amount of four weeks' pay,

the industrial tribunal shall, subject to paragraph (1B), increase the award under Article 152(1)(a) to the amount of four weeks' pay.

(1B) An industrial tribunal shall not be required by paragraph (1A) to increase the amount of an award if it considers that the increase would result in injustice to the employer.]

[^{F9}(1C) Where an employee is regarded as unfairly dismissed by virtue of Article 135F (blacklists) (whether or not the dismissal is unfair or regarded as unfair for any other reason), the amount of the basic award of compensation (before any reduction is made under Article 156) shall not be less than £5,700.]

Para. (2) rep. by 1999 NI 9

F5 Sum in art. 154(1) substituted (6.4.2023) by The Employment Rights (Increase of Limits) Order (Northern Ireland) 2023 (S.R. 2023/36), art. 1(1), **Sch.**

F6 SR 1998/386

F7 2003 NI 15

F8 Words in art. 154(1A)(a) omitted (6.4.2011) by virtue of Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011 (S.R. 2011/168), **reg. 3(7)** (with regs. 4, 5, 7)

F9 Art. 154(1C) inserted (6.4.2014) by The Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014 (S.R. 2014/88), regs. 1, **12(6)**

Basic award of two weeks' pay in certain cases

155. The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee—

- (a) by virtue of Article 173 is not regarded as dismissed for the purposes of Part XII, or
- (b) by virtue of Article 176 is not, or (if he were otherwise entitled) would not be, entitled to a redundancy payment.

Basic award: reductions

156.—(1) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which (if accepted) would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(3) Paragraph (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in Article 132(1)(a) and (b),^[F10] 132A(d),] 133(1), 134 or 136(1); and in such a case paragraph (2) applies only to so much of the basic award as is payable because of Article 154.

^[F11](3A) Where the complainant has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that award.]

- (4) The amount of the basic award shall be reduced or further reduced by the amount of—
- (a) any redundancy payment awarded by the tribunal under Part XII in respect of the same dismissal, or
 - (b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XII or otherwise).

^[F12](5) Where a dismissal is regarded as unfair by virtue of Article 135F (blacklists), the amount of the basic award shall be reduced or further reduced by the amount of any basic award under Article 154(1) in respect of the same dismissal under Article 136(1) (dismissal on grounds related to trade union membership or activities) or Article 137(1) and (7) (selection for redundancy on grounds related to trade union membership or activities).]

F10 SR 1998/386

F11 1998 NI 8

F12 Art. 156(5) added (6.4.2014) by The Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014 (S.R. 2014/88), regs. 1, 12(7)

Compensatory award

157.—(1) Subject to the provisions of this Article and Articles 158^[F13], 158A], 160^[F14] and 161], the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

- (2) The loss referred to in paragraph (1) shall be taken to include—

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- (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
- (b) subject to paragraph (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in paragraph (1) shall be taken to include in respect of any loss of—

- (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XII or otherwise), or
- (b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under Article 156) in respect of the same dismissal.

(4) In ascertaining the loss referred to in paragraph (1) 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) In determining, for the purposes of paragraph (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—

- (a) calling, organising, procuring or financing a strike or other industrial action, or
- (b) threatening to do so,

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

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

[^{F15}(6A) Where—

- (a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure; and
- (b) it appears to the tribunal that the 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%.]

(7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XII or otherwise) exceeds the amount of the basic award which would be payable but for Article 156(4), that excess goes to reduce the amount of the compensatory award.

[^{F16}(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under Article 151(3)(a), there shall be deducted from the compensatory award any award made under Article 146(5) at the time of the order under Article 147.]

F13 Words in art. 157(1) inserted (15.1.2006) by [Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2005 \(S.I. 2005/3424 \(N.I. 20\)\)](#), **arts. 1(2), 5(2)**

F14 2003 NI 15

F15 [Art. 157\(6A\)](#) inserted (1.10.2017) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\)](#), **ss. 14(5), 29(2)**; S.R. 2017/199, art. 2

F16 2003 NI 15

Limit of compensatory award etc.

158.—(1) The amount of—

- (a) any compensation awarded to a person under Article 151(1) and (2), or
- (b) a compensatory award to a person calculated in accordance with Article 157,

shall not exceed [^{F17}£105,915].

[^{F18}(1A) Paragraph (1) shall not apply to compensation awarded, or a compensatory award made, to a person in a case where he is regarded as unfairly dismissed by virtue of Article 132, 134A, [^{F19}135F,] 137(3) or 137(5A).]

[^{F20}(1B) Where an employee is regarded as unfairly dismissed by virtue of Article 135F (blacklists) (whether or not the dismissal is unfair or regarded as unfair for any other reason), the amount of award of compensation shall not exceed £76,600.]

Para. (2) rep. by 1999 NI 9

(3) In the case of compensation awarded to a person under Article 151(1) and (2), the limit imposed by this Article may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under Article 148(2)(a) or Article 149(2)(d).

(4) Where—

- (a) a compensatory award is an award under sub-paragraph (a) of paragraph (3) of Article 151, and
- (b) an additional award falls to be made under sub-paragraph (b) of that paragraph,

the limit imposed by this Article on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under Article 148(2)(a) or Article 149(2)(d).

(5) The limit imposed by this Article applies to the amount which the industrial tribunal would, apart from this Article, award in respect of the subject matter of the complaint after taking into account—

- (a) any payment made by the respondent to the complainant in respect of that matter, and
- (b) any reduction in the amount of the award required by any statutory provision or rule of law.

F17 Sum in art. 158(1) substituted (6.4.2023) by [The Employment Rights \(Increase of Limits\) Order \(Northern Ireland\) 2023 \(S.R. 2023/36\)](#), art. 1(1), **Sch.**

F18 1999 NI 9

F19 Word in art. 158(1A) inserted (6.4.2014) by [The Employment Relations \(Northern Ireland\) Order 1999 \(Blacklists\) Regulations \(Northern Ireland\) 2014 \(S.R. 2014/88\)](#), regs. 1, **12(8)(a)**

F20 Art. 158(1B) inserted (6.4.2014) by [The Employment Relations \(Northern Ireland\) Order 1999 \(Blacklists\) Regulations \(Northern Ireland\) 2014 \(S.R. 2014/88\)](#), regs. 1, **12(8)(b)**

[^{F21}Adjustments under the Employment (Northern Ireland) Order 2003

158A. Where an award of compensation for unfair dismissal falls to be—

- (a) reduced or increased under Article 17 of the Employment (Northern Ireland) Order 2003 (non-completion of statutory procedures); or
- (b) increased under Article 27 of that Order (failure to give statement of employment particulars),

the adjustment shall be in the amount awarded under Article 152(1)(b) and shall be applied immediately before any reduction under Article 157(6) or (7).]

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F21 2003 NI 15

Art. 159 rep. by 1999 NI 9

Acts which are both unfair dismissal and discrimination

160.—^{F22}(1) Where compensation falls to be awarded in respect of any act both under—

- (a) the provisions of this Order relating to unfair dismissal, and
- ^{F23}(b) any one or more of the following—
 - (i) the Sex Discrimination (Northern Ireland) Order 1976;
 - (ii) the Disability Discrimination Act 1995;
 - (iii) the Race Relations (Northern Ireland) Order 1997;
 - (iv) the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003;
 - (v) the Employment Equality (Age) Regulations (Northern Ireland) 2006.]

an industrial tribunal shall not award compensation under any one of those^{F24} . . . Orders^{F25} or Regulations] in respect of any loss or other matter which is or has been taken into account under^{F24} any other of them] by the tribunal (or another industrial tribunal) in awarding compensation on the same or another complaint in respect of that act.]

(2) Where compensation falls to be awarded in respect of any act both under the^{F26} Fair Employment and Treatment (Northern Ireland) Order 1998] and under the provisions of this Order relating to unfair dismissal, an industrial tribunal shall not award compensation under this Order in respect of any loss or other matter which has been taken into account under^{F26} the Fair Employment and Treatment (Northern Ireland) Order 1998] by the Fair Employment Tribunal for Northern Ireland in awarding compensation on a complaint in respect of that act.

F22 1997 NI 6

F23 Art. 160(1)(b) 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(10)** (with reg. 50)

F24 1998 NI 8

F25 SR 2003/497

F26 1998 NI 21

Matters to be disregarded in assessing contributory fault

161.—(1) Where an industrial tribunal makes an award of compensation for unfair dismissal in a case where the dismissal is unfair by virtue of Article 136 or Article 137(1) and (7), the tribunal shall disregard, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, any such conduct or action of the complainant as is specified below.

(2) Conduct or action of the complainant shall be disregarded in so far as ,it constitutes a breach or proposed breach of a requirement—

- (a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions,
- (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions,^{F27} . . .
- (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions^{F27}, or]

[^{F27}(d) not to make use of services made available by any trade union or by a particular trade union or by one of a number of particular trade unions.]

For the purposes of this paragraph a requirement means a requirement imposed on the complainant by or under an arrangement or contract of employment or other agreement.

[^{F27}(2A) Conduct or action of the complainant shall be disregarded in so far as it constitutes acceptance of or failure to accept an offer made in contravention of Article 77A or 77B.]

(3) Conduct or action of the complainant shall be disregarded in so far as it constitutes a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in Article 136(3)(a) or an objection, or proposed, objection, (however expressed) to the operation of a provision of a kind mentioned in Article 136(3)(b).

F27 [2004 NI 19](#)

Art. 162 rep. by 1999 NI 9

Art. 162A rep. by 2003 NI 15

Art. 162B rep. by 1999 NI 9

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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](#)