
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XII

REDUNDANCY PAYMENTS ETC.

CHAPTER VII

SUPPLEMENTARY

Application of Part to particular cases

Employment not under contract of employment

206.—(1) The Department may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part and the provisions of this Order supplementary to this Part have effect in relation to any employment of a description to which this Article applies as may be so prescribed as if —

- (a) it were employment under a contract of employment,
 - (b) any person engaged in employment of that description were an employee, and
 - (c) such person as may be determined by or under the regulations were his employer.
- (2) This Article applies to employment of any description which—
- (a) is employment in the case of which secondary Class 1 contributions are payable under Part I of the Social Security Contributions and Benefits Act (Northern Ireland) 1992 in respect of persons engaged in it, but
 - (b) is not employment under a contract of service or of apprenticeship or employment of any description mentioned in Article 194 (whether as originally enacted or as modified by an order under Article 250(1)).

Termination of employment by statute

207.—(1) The Department may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part has effect in relation to any person who by virtue of any statutory provisions—

- (a) is transferred to, and becomes a member of, a body specified in those provisions, but
- (b) at a time so specified ceases to be a member of that body unless before that time certain conditions so specified have been fulfilled,

as if the cessation of his membership of that body by virtue of those provisions were dismissal by his employer by reason of redundancy.

(2) The power conferred by paragraph (1) is exercisable whether or not membership of the body in question constitutes employment within the meaning of Article 3(5); and, where that

membership does not constitute such employment, that power may be exercised in addition to any power exercisable under Article 206.

Employees paid by person other than employer

208.—(1) For the purposes of the operation of the provisions of this Part (and Chapter III of Part I) in relation to any employee whose remuneration is, by virtue of any statutory provision, payable to him by a person other than his employer, each of the references to the employer specified in paragraph (2) shall be construed as a reference to the person by whom the remuneration is payable.

(2) The references referred to in paragraph (1) are the first reference in Article 170(1), the third reference in Article 175(3), the first reference in Article 177(3) and the first reference in Article 178(2)(c) and the references in Articles 10(5), 177(2)(b), 178(4) and (5), 184(a) and (b), 185(3), 187(1)(b), 193(4), 197(6), 199 to 204 and 205(1).

Death of employer or employee

Death of employer: dismissal

209.—(1) Where the contract of employment of an employee is taken for the purposes of this Part to be terminated by his employer by reason of the employer's death, this Part has effect in accordance with the following provisions of this Article.

(2) Article 173 applies as if—

- (a) in paragraph (1)(a), for the words “in pursuance” onwards there were substituted “by a personal representative of the deceased employer”,
- (b) in paragraph (1)(b), for the words “either immediately” onwards there were substituted “not later than eight weeks after the death of the deceased employer”, and
- (c) in paragraphs (2)(b) and (6)(a), for the word “employer” there were substituted “personal representative of the deceased employer”.

(3) Article 176(1) applies as if—

- (a) for the words “before the end of his employment” there were substituted “by a personal representative of the deceased employer”, and
- (b) for the words “either immediately” onwards there were substituted “not later than eight weeks after the death of the deceased employer”.

(4) For the purposes of Article 176—

- (a) provisions of the contract as renewed, or of the new contract, do not differ from the corresponding provisions of the contract in force immediately before the death of the deceased employer by reason only that the personal representative would be substituted for the deceased employer as the employer, and
- (b) no account shall be taken of that substitution in determining whether refusal of the offer was unreasonable or whether the employee acted reasonably in terminating or giving notice to terminate the new or renewed employment.

(5) Article 181 has effect as if—

- (a) paragraph (1) were omitted, and
- (b) in paragraph (2), sub-paragraph (a) were omitted and, in sub-paragraph (b), for the word “four” there were substituted “eight”.

(6) For the purposes of the application of this Part (in accordance with Article 196(2)) in relation to an employee who was employed as a domestic servant in a private household, references in this Article and Articles 14(4) and (5) and 210 to a personal representative include a person to whom the

management of the household has passed, otherwise than in pursuance of a sale or other disposition for valuable consideration, in consequence of the death of the employer.

Death of employer: lay-off and short-time

210.—(1) Where an employee is laid off or kept on short-time and his employer dies, this Part has effect in accordance with the following provisions of this Article.

(2) Where the employee—

- (a) has been laid off or kept on short-time for one or more weeks before the death of the employer,
- (b) has not given the deceased employer notice of intention to claim before the employer's death,
- (c) after the employer's death has his contract of employment renewed, or is re-engaged under a new contract, by a personal representative of the deceased employer, and
- (d) after renewal or re-engagement is laid off or kept on short-time for one or more weeks by the personal representative,

the week in which the employer died and the first week of the employee's employment by the personal representative shall be treated for the purposes of Chapter III as consecutive weeks (and references to four weeks or thirteen weeks shall be construed accordingly).

(3) The following provisions of this Article apply where—

- (a) the employee has given the deceased employer notice of intention to claim before the employer's death,
- (b) the employer's death occurred before the end of the period of four weeks after the service of the notice, and
- (c) the employee has not terminated his contract of employment by notice expiring before the employer's death.

(4) If the contract of employment is not renewed, and the employee is not re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim—

- (a) Articles 184 and 187 do not apply, but
- (b) (subject to that) Chapter III applies as if the employer had not died and the employee had terminated the contract of employment by a week's notice, or by the minimum notice which he is required to give to terminate the contract (if longer than a week), expiring at the end of that period.

(5) If—

- (a) the contract of employment is renewed, or the employee is re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim, and
- (b) the employee was laid off or kept on short-time by the deceased employer for one or more of those weeks and is laid off or kept on short-time by the personal representative for the week, or for the next two or more weeks, following the renewal or re-engagement,

paragraph (6) has effect.

(6) Where this paragraph has effect Chapter III applies as if—

- (a) all the weeks mentioned in paragraph (5) were consecutive weeks during which the employee was employed (but laid off or kept on short-time) by the same employer, and

- (b) the periods specified by Article 185(3)(a) and (b) as the relevant period were extended by any week or weeks any part of which was after the death of the employer and before the date on which the renewal or re-engagement took effect.

Death of employee

211.—(1) Where an employee whose employer has given him notice to terminate his contract of employment dies before the notice expires, this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.

(2) Where—

- (a) an employee's contract of employment has been terminated by the employer,
- (b) (by virtue of paragraph (5) of Article 180) a date later than the relevant date as defined by the previous provisions of that Article is the relevant date for the purposes of certain provisions of this Order, and
- (c) the employee dies before that date,

that paragraph applies as if the notice to which it refers would have expired on the employee's death.

(3) Where—

- (a) an employer has given notice to an employee to terminate his contract of employment and has offered to renew his contract of employment or to re-engage him under a new contract, and
- (b) the employee dies without having accepted or refused the offer and without the offer having been withdrawn,

Article 176(2) applies as if for the words "he unreasonably refuses" there were substituted "it would have been unreasonable on his part to refuse".

(4) Where an employee's contract of employment has been renewed or he has been re-engaged under a new contract—

- (a) if he dies during the trial period without having terminated, or given notice to terminate, the contract, Article 176(4) applies as if for sub-paragraph (d) there were substituted—
 - “(d) it would have been unreasonable for the employee during the trial period to terminate or give notice to terminate the contract.”, and
- (b) if during that trial period he gives notice to terminate the contract but dies before the notice expires, Articles 173(2) and 176(4) apply as if the notice had expired (and the contract had been terminated by its expiry) on the date of the employee's death.

(5) Where in the circumstances specified in sub-paragraphs (a) and (b) of paragraph (3) of Article 171 the employee dies before the notice given by him under sub-paragraph (b) of that paragraph expires—

- (a) if he dies before his employer has given him a notice such as is specified in paragraph (2) of Article 177, paragraphs (3) and (4) of that Article apply as if the employer had given him such a notice and he had not complied with it, and
- (b) if he dies after his employer has given him such a notice, that Article applies as if the employee had not died but did not comply with the notice.

(6) Where an employee has given notice of intention to claim—

- (a) if he dies before he has given notice to terminate his contract of employment and before the relevant period (as defined in paragraph (3) of Article 185) has expired, that section does not apply, and

- (b) if he dies within the period of seven days after the service of the notice of intention to claim, and before the employer has given a counter-notice, Chapter III applies as if the employer had given a counter-notice within that period of seven days.
- (7) Where a claim for a redundancy payment is made by a personal representative of a deceased employee—
- (a) if the employee died before the end of the period of six months beginning with the relevant date, paragraph (1) of Article 199, and
 - (b) if the employee died after the end of the period of six months beginning with the relevant date but before the end of the following period of six months, paragraph (2) of that Article, applies as if for the words “six months” there were substituted “one year”.

Equivalent payments

References to industrial tribunals

212.—(1) Where the terms and conditions (whether or not they constitute a contract of employment) on which a person is employed in employment of any description mentioned in Article 194 include provision—

- (a) for the making of a payment to which this Article applies, and
- (b) for referring to an industrial tribunal any question as to the right of any person to such a payment in respect of that employment or as to the amount of such a payment,

the question shall be referred to and determined by an industrial tribunal.

(2) This Article applies to any payment by way of compensation for loss of employment of any description mentioned in Article 194 which is payable in accordance with arrangements falling within paragraph (3) or (4).

(3) The arrangements which fall within this paragraph are arrangements made with the approval of the Department of Finance and Personnel for securing that a payment will be made—

- (a) in circumstances which in the opinion of that Department correspond (subject to the appropriate modifications) to those in which a right to a redundancy payment would have accrued if the provisions of this Part (apart from Article 194 and this Article) applied, and
- (b) on a scale which in the opinion of the Department of Finance and Personnel, taking into account any sums payable in accordance with—

- (i) a scheme made under Article 3 of the Superannuation (Northern Ireland) Order 1972,
or

- (ii) the Superannuation Acts (Northern Ireland) 1967 and 1969,

to or in respect of the person losing the employment in question, corresponds (subject to the appropriate modifications) to that on which a redundancy payment would have been payable if those provisions applied.

(4) The arrangements which fall within this paragraph are those which fall within section 177(3) of the Employment Rights Act 1996.

Other supplementary provisions

Old statutory compensation schemes

213.—(1) The Department may make provision by regulations for securing that where—

(a) (apart from this Article) a person is entitled to compensation under a statutory provision to which this Article applies, and

(b) the circumstances are such that he is also entitled to a redundancy payment,

the amount of the redundancy payment shall be set off against the compensation to which he would be entitled apart from this Article; and any statutory provision to which any such regulations apply shall have effect subject to the regulations.

(2) This Article applies to any statutory provision—

- (a) which was in force immediately before 6th December 1965, and
- (b) under which the holders of such situations, places or employments as are specified in that provision are, or may become, entitled to compensation for loss of employment, or for loss or diminution of emoluments or of pension rights, in consequence of the operation of any other statutory provision referred to in that provision.

Notices

214.—(1) Any notice which under this Part is required or authorised to be given by an employer to an employee may be given by being delivered to the employee, or left for him at his usual or last-known place of residence, or sent by post addressed to him at that place.

(2) Any notice which under this Part is required or authorised to be given by an employee to an employer may be given either by the employee himself or by a person authorised by him to act on his behalf, and (whether given by or on behalf of the employee)—

- (a) may be given by being delivered to the employer, or sent by post addressed to him at the place where the employee is or was employed by him, or
- (b) if arrangements have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, left for such a person at a place so designated or sent by post to such a person at an address so designated.

(3) In this Article any reference to the delivery of a notice includes, in relation to a notice which is not required by this Part to be in writing, a reference to the oral communication of the notice.

(4) Any notice which, in accordance with any provision of this Article, is left for a person at a place referred to in that provision shall, unless the contrary is proved, be presumed to have been received by him on the day on which it was left there.

(5) Nothing in paragraph (1) or (2) affects the capacity of an employer to act by a servant or agent for the purposes of any provision of this Part (including either of those paragraphs).

(6) In relation to an employee to whom Article 208 applies, this Article has effect as if—

- (a) any reference in paragraph (1) or (2) to a notice required or authorised to be given by or to an employer included a reference to a notice which, by virtue of that Article, is required or authorised to be given by or to the person by whom the remuneration is payable,
- (b) in relation to a notice required or authorised to be given to that person, any reference to the employer in sub-paragraph (a) or (b) of paragraph (2) were a reference to that person, and
- (c) the reference to an employer in paragraph (5) included a reference to that person.

Interpretation

215.—(1) In this Part—

- “counter-notice” shall be construed in accordance with Article 184(a),
- “dismissal” and “dismissed” shall be construed in accordance with Articles 171 to 173,
- “employer’s payment” has the meaning given by Article 201,

“notice of intention to claim” shall be construed in accordance with Article 183(1),

“obligatory period of notice” has the meaning given by Article 171(4), and

“trial period” shall be construed in accordance with Article 173(3).

(2) In this Part—

(a) references to an employee being laid off or being eligible for a redundancy payment by reason of being laid off, and

(b) references to an employee being kept on short-time or being eligible for a redundancy payment by reason of being kept on short-time,

shall be construed in accordance with Articles 182 and 183.