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STATUTORY INSTRUMENTS

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**1998 No. 1265 (N.I. 8)**

**NORTHERN IRELAND**

**The Employment Rights (Dispute  
Resolution) (Northern Ireland) Order 1998**

*Made* - - - - *19th May 1998*  
*Laid before Parliament* *1st June 1998*  
*Coming into operation on days to be appointed under*  
*Article 1(2)*

At the Court at Buckingham Palace, the 19th day of May 1998

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to the purposes of the Employment Rights (Dispute Resolution) Act 1998 (other than those of section 1):

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 16(4) of the said Act of 1998) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**PART I**

**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998.

(2) This Order shall come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions and savings as appear to the Department to be appropriate.

## **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the Department” means the Department of Economic Development.

## **PART II**

### **INDUSTRIAL TRIBUNALS**

#### *Hearings etc.*

#### **Determinations without a hearing or full hearing**

3. In Article 9 of the Industrial Tribunals (Northern Ireland) Order 1996 (which authorises the making of industrial tribunal procedure regulations), after paragraph (3) there shall be inserted—

“(3A) Industrial tribunal procedure regulations may authorise the determination of proceedings without any hearing (and in private) where the parties have given their written consent (whether or not they have subsequently withdrawn it).

(3B) Industrial tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom the proceedings are brought (or his or their representatives) where—

- (a) the person (or, where more than one, each of the persons) against whom the proceedings are brought has done nothing to contest the case, or
- (b) it appears from the application made by the person (or, where more than one, each of the persons) bringing the proceedings that he is not (or they are not) seeking any relief which an industrial tribunal has power to give or that he is not (or they are not) entitled to any such relief.

(3C) Industrial tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom, and the person or persons against whom, the proceedings are brought (or his or their representatives) where—

- (a) an industrial tribunal is on undisputed facts bound by the decision of a court in another case to dismiss the case of the person or persons by whom, or of the person or persons against whom, the proceedings are brought, or
- (b) the proceedings relate only to a preliminary issue which may be heard and determined in accordance with regulations under Article 11(4).”.

#### **Hearings etc. by chairman alone**

4.—(1) In Article 6 of the Industrial Tribunals (Northern Ireland) Order 1996 (which makes provision about the composition of an industrial tribunal), paragraph (3) (which specifies the tribunal proceedings which are to be heard by the chairman alone unless he decides otherwise) shall be amended in accordance with paragraphs (2) to (4).

(2) For sub-paragraph (a) (which specifies proceedings under the Employment Rights (Northern Ireland) Order 1996) there shall be substituted—

“(a) proceedings—

- (i) on an application under Article 163, 166 or 167 of the Employment Rights Order (interim relief orders);
  - (ii) on a complaint under Article 55 (protection of wages), Article 66 (guarantee payment), Article 220 (protective award) or Article 233 (payment on insolvency of employer) of that Order;
  - (iii) on a complaint under Article 102(1) of that Order relating to Article 96 (suspension from work on medical grounds) of that Order;
  - (iv) on a reference under Article 43 (statement of particulars of employment and itemised pay statement), Article 198 (redundancy payment) or Article 205 (liability for employer's payment) of that Order; or
  - (v) for an appointment under Article 248(4) (institution or continuance of tribunal proceedings where employee is deceased) of that Order;”.
- (3) After sub-paragraph (a) there shall be inserted—
- “(aa) proceedings on a complaint under Article 36 (employer deducting unauthorised or excessive union subscription) or Article 61 (employer deducting or refusing to deduct union contribution) of the Trade Union and Labour Relations (Northern Ireland) Order 1995;
  - (ab) proceedings on a complaint under regulation 11(5) of the Transfer of Undertakings (Protection of Employment) Regulations 1981;”.
- (4) Sub-paragraph (e) (which specifies proceedings in which the person bringing the proceedings has given written notice withdrawing the case), apart from the word “and”, shall cease to have effect.
- (5) After paragraph (6) of that Article (which makes provision for industrial tribunal procedure regulations to provide that any act required or authorised by the regulations to be done by a tribunal may be done by the chairman alone) there shall be inserted—
- “(6A) Paragraph (6) in particular enables industrial tribunal procedure regulations to provide that—
- (a) the determination of proceedings in accordance with regulations under Article 9(3A), (3B) or (3C)(a),
  - (b) the carrying-out of pre-hearing reviews in accordance with regulations under paragraph (1) of Article 11 (including the exercise of powers in connection with such reviews in accordance with regulations under sub-paragraph (b) of that paragraph), or
  - (c) the hearing and determination of a preliminary issue in accordance with regulations under Article 11(4) (where it involves hearing witnesses other than the parties or their representatives as well as where, in accordance with regulations under Article 9(3C)(b), it does not),
- may be done by the person mentioned in paragraph (1)(a) alone.”.

### **Hearings by chairman and one other member**

5. In Article 6(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (which provides that, subject to the following provisions of that Article, industrial tribunal proceedings are to be heard by the chairman and either two other members or, with the consent of the parties, one other member), for sub-paragraph (b) there shall be substituted—

- “(b) two other members selected as the other members in accordance with regulations so made or, with appropriate consent, one other member selected as the other member in accordance with regulations so made;

and in sub-paragraph (b) “appropriate consent” means either consent given at the beginning of the hearing by such of the parties as are then present in person or represented, or consent given by each of the parties.”.

#### *Other provisions*

#### **Legal officers**

6. After paragraph (6A) of Article 6 of the Industrial Tribunals (Northern Ireland) Order 1996 (which is inserted by Article 4(5)) there shall be inserted—

“(6B) Industrial tribunal procedure regulations may (subject to paragraph (6C)) also provide that any act which—

(a) by virtue of paragraph (6) may be done by the person mentioned in paragraph (1) (a) alone, and

(b) is of a description specified by the regulations for the purposes of this paragraph, may be done by a person appointed as a legal officer in accordance with regulations under Article 3(1); and any act so done shall be treated as done by an industrial tribunal.

(6C) But regulations under paragraph (6B) may not specify—

(a) the determination of any proceedings, other than proceedings in which the parties have agreed the terms of the determination or in which the person bringing the proceedings has given notice of the withdrawal of the case, or

(b) the carrying-out of pre-hearing reviews in accordance with regulations under Article 11(1).”.

#### **Jurisdiction in cases about political fund contributions**

7. For Article 61 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (which provides that a person who alleges that his employer has failed to comply with Article 60 of that Order by wrongly deducting a political fund contribution or refusing to deduct union dues may make an application to a county court) there shall be substituted—

#### **“Complaint in respect of employer’s failure**

61.—(1) A person who claims his employer has failed to comply with Article 60 in deducting or refusing to deduct any amount from emoluments payable to him may present a complaint to an industrial tribunal.

(2) A tribunal shall not consider a complaint under paragraph (1) unless it is presented—

(a) within the period of three months beginning with the date of the payment of the emoluments or (if the complaint relates to more than one payment) the last of the payments, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

(3) Where on a complaint under paragraph (1) arising out of paragraph (3) (refusal to deduct union dues) of Article 60 the question arises whether the employer’s refusal to deduct an amount was attributable to the giving of the certificate or was otherwise connected with the duty imposed by paragraph (1) of that Article, it is for the employer to satisfy the tribunal that it was not.

(4) Where a tribunal finds that a complaint under paragraph (1) is well-founded—

- (a) it shall make a declaration to that effect and, where the complaint arises out of paragraph (1) of Article 60, order the employer to pay to the complainant the amount deducted in contravention of that paragraph less any part of that amount already paid to him by the employer, and
  - (b) it may, if it considers it appropriate to do so in order to prevent a repetition of the failure, make an order requiring the employer to take, within a specified time, the steps specified in the order in relation to emoluments payable by him to the complainant.
- (5) A person who claims his employer has failed to comply with an order made under paragraph (4)(b) on a complaint presented by him may present a further complaint to an industrial tribunal; but only one complaint may be presented under this paragraph in relation to any order.
- (6) A tribunal shall not consider a complaint under paragraph (5) unless it is presented—
- (a) after the end of the period of four weeks beginning with the date of the order, but
  - (b) before the end of the period of six months beginning with that date.
- (7) Where on a complaint under paragraph (5) a tribunal finds that an employer has, without reasonable excuse, failed to comply with an order made under paragraph (4)(b), it shall order the employer to pay to the complainant an amount equal to two weeks' pay.
- (8) Chapter IV of Part I of the Employment Rights (Northern Ireland) Order 1996 (calculation of a week's pay) applies for the purposes of paragraph (7) with the substitution for Article 21 of the following—
- “For the purposes of this Chapter in its application to paragraph (7) of Article 61 of the Trade Union and Labour Relations Order, the calculation date is the date of the payment, or (if more than one) the last of the payments, to which the complaint related.””.

## PART III

### OTHER METHODS OF DISPUTE RESOLUTION

#### *Arbitration*

#### **Labour Relations Agency arbitration scheme**

8. After Article 84 of the Industrial Relations (Northern Ireland) Order 1992 there shall be inserted—

#### **“Arbitration scheme for unfair dismissal cases etc.**

**84A.**—(1) The Agency may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an industrial tribunal arising out of a contravention or alleged contravention of—

- (a) Part XI of the Employment Rights (Northern Ireland) Order 1996 (unfair dismissal); or
- (b) any statutory provision specified in an order made by the Department.

(2) When the Agency has prepared such a scheme it shall submit a draft of the scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the scheme, and

(b) making provision for it to come into effect.

(3) The Agency may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Department which, if it approves the scheme, shall make an order—

(a) setting out the revised scheme, and

(b) making provision for it to come into effect.

(4) The Agency may take any steps appropriate for promoting awareness of a scheme prepared under this Article.

(5) Where the parties to any dispute within paragraph (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this Article, the Agency shall refer the dispute to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).

(6) Nothing in the Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this Article except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.

(7) Where a scheme set out in an order under this Article includes provision for the making of re-employment orders in arbitrations conducted in accordance with the scheme, the order setting out the scheme may require industrial tribunals to enforce such orders—

(a) in accordance with Article 151 of the Employment Rights (Northern Ireland) Order 1996 (enforcement by award of compensation), or

(b) in accordance with that Article as modified by the order.

For this purpose “re-employment orders” means orders requiring that persons found to have been unfairly dismissed be reinstated, re-engaged or otherwise re-employed.

(8) An order under this Article setting out a scheme may provide that, in the case of disputes within paragraph (1)(a), such part of an award made in accordance with the scheme as is specified by the order shall be treated as a basic award of compensation for unfair dismissal for the purposes of Article 229(1)(d) of the Employment Rights (Northern Ireland) Order 1996 (which specifies such an award as a debt which the Department must satisfy if the employer has become insolvent).

(9) No order shall be made under paragraph (1)(b) unless a draft of the order has been laid before and approved by resolution of the Assembly.”.

### **Effect of arbitration agreements**

9.—(1) In Article 77 of the Sex Discrimination (Northern Ireland) Order 1976 (paragraph (3) of which prohibits contracting out of the provisions of that Order or the Equal Pay Act (Northern Ireland) 1970, but subject to exceptions specified in paragraph (4)), after paragraph (4C) there shall be added—

“(4D) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of paragraph (4)(a) and

(aa) as being a contract settling a complaint if—

(i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; and

(ii) the agreement is to submit it to arbitration in accordance with the scheme, but

(b) shall be regarded for those purposes as neither being nor including such a contract in any other case.”.

(2) In Article 146 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (paragraph (1) of which prohibits contracting out of the provisions of that Order, but subject to exceptions specified in paragraphs (2) and (3)), after paragraph (6) there shall be added—

“(7) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of paragraphs (2) and (3) as being an agreement to refrain from instituting or continuing proceedings if—

- (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; and
- (ii) the agreement is to submit it to arbitration in accordance with the scheme, but

(b) shall be regarded for those purposes as neither being nor including such an agreement in any other case.”.

(3) In section 9 of the Disability Discrimination Act 1995 (subsection (1) of which prohibits contracting out of the provisions of Part II of that Act, but subject to exceptions specified in subsection (2)), after subsection (5) there shall be added—

“(6) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of subsection (2) as being an agreement not to institute, or an agreement not to continue, proceedings if—

- (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992, and
- (ii) the agreement is to submit it to arbitration in accordance with the scheme, but

(b) shall be regarded as neither being nor including such an agreement in any other case.”.

(4) In Article 245 of the Employment Rights (Northern Ireland) Order 1996 (paragraph (1) of which prohibits contracting out of the provisions of that Order, but subject to exceptions specified in paragraph (2)), after paragraph (4) there shall be added—

“(5) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of paragraph (2)(e) and (f) as being an agreement to refrain from instituting or continuing proceedings if—

- (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992, and
- (ii) the agreement is to submit it to arbitration in accordance with the scheme, but

(b) shall be regarded as neither being nor including such an agreement in any other case.”.

(5) In Article 68 of the Race Relations (Northern Ireland) Order 1997 (paragraph (5) of which prohibits contracting out of the provisions of that Order, but subject to exceptions specified in paragraph (6)), after paragraph (9) there shall be added—

“(10) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of paragraph (6)(a) and

(b) as being a contract settling a complaint if—

- (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; and
  - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded for those purposes as neither being nor including such a contract in any other case.”.

### *Compromise agreements*

#### **Advice of non-lawyer**

**10.**—(1) In each of the provisions specified in paragraph (2) (which provide that, for a compromise agreement to be valid, independent legal advice must have been received from a qualified lawyer), for “independent legal advice from a qualified lawyer” there shall be substituted “advice from a relevant independent adviser”.

(2) The provisions referred to in paragraph (1) are—

- (a) Article 77(4A)(c) of the Sex Discrimination (Northern Ireland) Order 1976;
- (b) Article 146(4)(c) of the Trade Union and Labour Relations (Northern Ireland) Order 1995;
- (c) section 9(3)(a) of the Disability Discrimination Act 1995;
- (d) Article 245(3)(c) of the Employment Rights (Northern Ireland) Order 1996; and
- (e) Article 68(7)(c) of the Race Relations (Northern Ireland) Order 1997.

#### **Indemnity cover**

**11.**—(1) In each of the provisions specified in paragraph (2) (which provide that, for a compromise agreement to be valid, there must have been in force a policy of insurance covering the risk of a claim against the person who provided the advice about the agreement), for “policy of insurance” there shall be substituted “contract of insurance, or an indemnity provided for members of a profession or professional body”.

(2) The provisions referred to in paragraph (1) are—

- (a) Article 77(4A)(d) of the Sex Discrimination (Northern Ireland) Order 1976;
- (b) Article 146(4)(d) of the Trade Union and Labour Relations (Northern Ireland) Order 1995;
- (c) section 9(3)(b) of the Disability Discrimination Act 1995;
- (d) Article 245(3)(d) of the Employment Rights (Northern Ireland) Order 1996; and
- (e) Article 68(7)(d) of the Race Relations (Northern Ireland) Order 1997;

### *Other provisions*

#### **Settlements of redundancy cases**

**12.**—(1) In Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (which specifies the proceedings in relation to which the provisions about conciliation apply), in subparagraph (c) (proceedings under the Employment Rights (Northern Ireland) Order 1996) after head (ix) there shall be inserted—

“(ixa) Article 170 (redundancy payment);”.

(2) In Article 201(2) of the Employment Rights (Northern Ireland) Order 1996 (which defines “employer’s payment” for the purposes of the provisions requiring the Department to make a



payment to an employee whose employer is liable to pay him an employer's payment), after sub-paragraph (a) there shall be inserted—

“(aa) a payment which his employer is liable to make to him under an agreement to refrain from instituting or continuing proceedings for a contravention or alleged contravention of Article 170 which has effect by virtue of Article 245(2)(e) or (f), or”.

(3) In Article 203(1) of that Order (which specifies the amount which the Department is required to pay in respect of an employer's payment), after sub-paragraph (a) there shall be inserted—

“(aa) where the employer's payment to which the employee's application under Article 201 relates is a payment which his employer is liable to make to him under an agreement having effect by virtue of Article 245(2)(e) or (f), is a sum equal to the amount of the employer's payment or of any redundancy payment which the employer would have been liable to pay to the employee but for the agreement, whichever is less, and”.

### **Dismissal procedures agreements**

**13.**—(1) In Article 142 of the Employment Rights (Northern Ireland) Order 1996 (which provides that the statutory right not to be unfairly dismissed does not apply to employees covered by a designated dismissal procedures agreement), for paragraph (2) (which provides that the statutory right nevertheless applies in the case of dismissals specified in certain statutory provisions) there shall be substituted—

“(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.”.

(2) In paragraph (3) of that Article (which specifies the matters as to which the Department must be satisfied before designating a dismissal procedures agreement), for sub-paragraph (e) (which requires a dismissal procedures agreement to provide for arbitration or independent adjudication where a decision cannot otherwise be reached) there shall be substituted—

“(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”.

(3) After paragraph (5) of that Article there shall be added—

“(6) Where an award is made under a designated dismissal procedures agreement it may be enforced, by leave of a county court, in the same manner as a judgment of the court to the same effect and, where leave is given, judgment may be entered in terms of the award.”.

(4) In Article 229 of the Employment Rights (Northern Ireland) Order 1996 (which specifies the debts which the Department must satisfy if an employer has become insolvent) in paragraph (1)(d) (which specifies a basic award of compensation for unfair dismissal payable by the employer), after “dismissal” there shall be inserted “or so much of an award under a designated dismissal procedures agreement as does not exceed any basic award of compensation for unfair dismissal to which the employee would be entitled but for the agreement”.

(5) The amendments made by paragraphs (1) and (2) do not affect any dismissal procedures agreement designated by the Department before those paragraphs come into operation.

## PART IV

### AWARDS OF COMPENSATION

#### Internal appeal procedures and unfair dismissal awards

14. After Article 162 of the Employment Rights (Northern Ireland) Order 1996 there shall be inserted—

##### “Internal appeal procedures

162A.—(1) Where in a case in which an award of compensation for unfair dismissal falls to be made under Article 146(4) or 151(3)(a) the tribunal finds that—

- (a) the employer provided a procedure for appealing against dismissal, and
- (b) the complainant was, at the time of the dismissal or within a reasonable period afterwards, given written notice stating that the employer provided the procedure and including details of it, but
- (c) the complainant did not appeal against the dismissal under the procedure (otherwise than because the employer prevented him from doing so),

the tribunal shall reduce the compensatory award included in the award of compensation for unfair dismissal by such amount (if any) as it considers just and equitable.

(2) Where in a case in which an award of compensation for unfair dismissal falls to be made under Article 146(4) or 151(3)(a) the tribunal finds that—

- (a) the employer provided a procedure for appealing against dismissal, but
- (b) the employer prevented the complainant from appealing against the dismissal under the procedure,

the award of compensation for unfair dismissal shall include a supplementary award of such amount (if any) as the tribunal considers just and equitable.

(3) In determining the amount of a reduction under paragraph (1) or a supplementary award under paragraph (2) the tribunal shall have regard to all the circumstances of the case, including in particular the chances that an appeal under the procedure provided by the employer would have been successful.

(4) The amount of such a reduction or supplementary award shall not exceed the amount of two weeks' pay.”.

#### Acts which are both unfair dismissal and disability discrimination

15.—(1) In Article 151(6) of the Employment Rights (Northern Ireland) Order 1996 (which provides for a higher additional award for an unfairly dismissed employee who is not reinstated or re-engaged as ordered in a case where the dismissal is an act of discrimination within the meaning of other statutory provisions), at the end there shall be added

“and

- (d) a dismissal which is an act of discrimination within the meaning of the Disability Discrimination Act 1995 which is unlawful by virtue of that Act.”.

(2) Article 160(1) of the Employment Rights (Northern Ireland) Order 1996 (which prohibits recovery under more than one provision in the case of an act which is both unfair dismissal and sex or race discrimination) shall be amended as follows.

- (3) For sub-paragraph (b) there shall be substituted—

“(b) any one or more of the Sex Discrimination (Northern Ireland) Order 1976, the Disability Discrimination Act 1995 and the Race Relations (Northern Ireland) Order 1997.”.

(4) The words “two or three” shall cease to have effect.

(5) For the words “the other, or any of the others,” there shall be substituted “any other of them”.

## PART V

### AMENDMENTS AND REPEALS

#### **Amendments and repeals**

16. Schedule 1 (minor and consequential amendments) and Schedule 2 (repeals) shall have effect.

*N.H. Nicholls*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 16.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Sex Discrimination (Northern Ireland) Order 1976 (NI 15)*

1. For Article 77(4B) and (4C) substitute—

“(4B) A person is a relevant independent adviser for the purposes of paragraph (4A)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department of Economic Development.

(4BA) But a person is not a relevant independent adviser for the purposes of paragraph (4A)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party,
- (b) in the case of a person within paragraph (4B)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within paragraph (4B)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (4B) (d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4BB) In paragraph (4B)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(4BC) In paragraph (4B)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.

(4C) For the purposes of paragraph (4BA) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”.

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

2. After Article 84A (which is inserted by Article 8) insert—

### **“Dismissal procedures agreements**

**84B.** The Agency may, in accordance with any dismissal procedures agreement (within the meaning of the Employment Rights (Northern Ireland) Order 1996), refer any matter to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).”.

3. In Article 107(2) after “1(2),” insert “84A(1)(b),”.

### *The Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12)*

4. In Article 141(2) (which specifies the provisions which do not apply to persons in crown employment), for “Article 61(3) (power of county court)” substitute “Article 61(4)(b) (power of tribunal)”.

5.—(1) Article 146 (which restricts contracting out of the provisions of the Order) shall be amended as follows.

(2) In paragraph (4)(b) (which provides that a compromise agreement must relate to the particular complaint) for “complaint” substitute “proceedings”.

(3) For paragraphs (5) and (6) substitute—

“(5) A person is a relevant independent adviser for the purposes of paragraph (4)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department.

(5A) But a person is not a relevant independent adviser for the purposes of paragraph (4) (c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party,
- (b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within paragraph (5)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (5) (d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(5B) In paragraph (5)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(6) For the purposes of paragraph (5A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”.

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

*The Disability Discrimination Act 1995 (c. 50)*

6. In section 9 for subsections (4) and (5) substitute—

“(4) A person is a relevant independent adviser for the purposes of subsection (3)(a)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department of Economic Development.

(4A) But a person is not a relevant independent adviser for the purposes of subsection (3)

(a) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,
- (b) in the case of a person within subsection (4)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within subsection (4)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under subsection (4) (d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4B) In subsection (4)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(4C) In subsection (4)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.

(5) For the purposes of subsection (4A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”.

*The Employment Rights (Northern Ireland) Order 1996 (NI 16)*

7.—(1) Article 15 (which enables the making of regulations for preserving continuity of employment etc. in the case of a person who is dismissed and then reinstated or re-engaged in consequence of action to which paragraph (2) of the Article applies) shall be amended as follows.

(2) In paragraph (1)—

- (a) the words “, in consequence of action to which paragraph (2) applies,” shall cease to have effect,
- (b) for “or re-engaged” substitute “, re-engaged or otherwise re-employed”, and
- (c) at the end insert “in any circumstances prescribed by the regulations.”.

(3) Paragraphs (2) to (4) shall cease to have effect.

8. In Article 22(3) (which specifies the calculation date for a calculation for the purposes of Article 153 or 155 which involves the notion of a week’s pay), for “or 155” substitute “, 155 or 162A”.

**9.** In Article 55 (which makes provision for complaints to an industrial tribunal in respect of unlawful deductions from wages etc.), at the end add—

“(5) No complaint shall be presented under this Article in respect of any deduction made in contravention of Article 60 of the Trade Union and Labour Relations Order (wrongful deduction of political fund contribution).”.

**10.** In Article 146(4) (which provides for the making of an award of compensation for unfair dismissal in accordance with Articles 152 to 162 where no order for reinstatement or order for re-engagement is made), for “162” substitute “162A”.

**11.** In Article 151(3)(a) (which provides for the making of an award of compensation for unfair dismissal in accordance with Articles 152 to 162 where a complainant is not reinstated or re-engaged in accordance with an order for reinstatement or an order for re-engagement), for “162” substitute “162A”.

**12.—**(1) Article 152 (which provides that an award of compensation for unfair dismissal shall consist of a basic award, a compensatory award and, in certain cases, a special award) shall be amended as follows.

(2) In paragraph (1)(b) (which provides that an award of compensation for unfair dismissal shall include a compensatory award calculated in accordance with Articles 157, 158 and 160 to 162) after “162” add “and 162A(1), (3) and (4)”.

(3) After paragraph (3) add—

“(4) Where Article 162A(2) applies, the award shall also include a supplementary award.”.

**13.** In Article 156 (which makes provision for the reduction of the amount of a basic award of compensation for unfair dismissal), after paragraph (3) insert—

“(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.”.

**14.** In Article 157(1) (which makes provision for the calculation of a compensatory award in accordance with that Article but subject to Articles 158, 160 and 161), for “and 161” substitute “to 162 and 162A(1), (3) and (4)”.

**15.—**(1) Article 245 (which restricts contracting out of the provisions of the Order) shall be amended as follows.

(2) In paragraph (3)(b) (which provides that a compromise agreement must relate to the particular complaint), for “complaint” substitute “proceedings”.

(3) For paragraph (4) substitute—

“(3A) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is a qualified lawyer;
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department.

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

- (3B) But a person is not a relevant independent adviser for the purposes of paragraph (3) (c) in relation to the employee or worker—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
  - (b) in the case of a person within paragraph (3A)(b) or (c), if the trade union or advice centre is the employer or an associated employer,
  - (c) in the case of a person within paragraph (3A)(c), if the employee or worker makes a payment for the advice received from him, or
  - (d) in the case of a person of a description specified in an order under paragraph (3A) (d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (4) In paragraph (3A)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.”.

*The Industrial Tribunals (Northern Ireland) Order 1996 (NI 18)*

**16.**—(1) Article 6 (which makes provision about the composition of an industrial tribunal) shall be amended as follows.

(2) In paragraph (1) (which provides that, subject to the following provisions of that Article, tribunal proceedings are to be heard by the chairman and other members), after “Subject to the following provisions of this Article” insert “and to Article 9(3A)”.

(3) In paragraph (6) (which makes provision for industrial tribunal procedure regulations to provide that any act required or authorised by the regulations to be done by a tribunal may be done by the chairman alone), for the words from “, in such circumstances” to “tribunal may” substitute “any act which is required or authorised by the regulations to be done by an industrial tribunal and is of a description specified by the regulations for the purposes of this paragraph may”.

**17.** In Article 7(1) (which provides for the payment of remuneration to the President and Vice-President of the Industrial Tribunals and the Fair Employment Tribunal and to full-time chairmen), at the end add

“and

- (c) any person who is a legal officer appointed in accordance with such regulations.”.

**18.**—(1) Article 9 (which authorises the making of industrial tribunal procedure regulations) shall be amended as follows.

(2) Paragraph (3)(f)(i) (which authorises the making of regulations about the persons entitled to appear and be heard on behalf of parties in tribunal proceedings) shall cease to have effect.

(3) In paragraph (4) (which provides that it is an offence to fail to comply with certain requirements imposed by an industrial tribunal by virtue of regulations), after sub-paragraph (b) insert

“, or

- (c) any requirement imposed by virtue of industrial tribunal procedure regulations to give written answers for the purpose of facilitating the determination of proceedings as mentioned in paragraph (3A), (3B) or (3C)”.

**19.** In Article 11(4) (which enables industrial tribunal procedure regulations to provide that issues relating to the entitlement to bring or contest proceedings may be heard and determined in advance), for the words “any issue” onwards substitute “separately any preliminary issue of a description prescribed by the regulations which is raised by any case.”.



20. In Article 20(1)(b) (which specifies the provisions of the Trade Union and Labour Relations (Northern Ireland) Order 1995 in relation to which the provisions about conciliation apply), for “or 38” substitute “, 38 or 60”.

*The Race Relations (Northern Ireland) Order 1997 (NI 6)*

21. For Article 68(8) and (9) substitute—

“(8) A person is a relevant independent adviser for the purposes of paragraph (7)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Department.

(8A) But a person is not a relevant independent adviser for the purposes of paragraph (7)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party,
- (b) in the case of a person within paragraph (8)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within paragraph (8)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under paragraph (8)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(8B) In paragraph (8)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(8C) In paragraph (8)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.

(9) For the purposes of paragraph (8A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.”.

SCHEDULE 2

Article 16.

REPEALS

Chapter or Number	Short title	Extent of repeal
1995 NI 12.	The Trade Union and Labour Relations (Northern Ireland) Order 1995.	Article 62.
1995 c. 50.	The Disability Discrimination Act 1995.	In Schedule 8, paragraph 6(2).

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

Chapter or Number	Short title	Extent of repeal
1996 NI 16.	The Employment Rights (Northern Ireland) Order 1996.	<p>In Article 15(1) the words “; in consequence of action to which paragraph (2) applies,”.</p> <p>Article 15(2) to (4).</p> <p>In Article 151(6)(a) the word “and”.</p> <p>In Article 151(6)(b) the word “and”.</p> <p>In Article 151(8) the words “(in accordance with Articles 152 to 162)”.</p> <p>In Article 160(1) the words “two or three”.</p> <p>In Article 201(2)(a) the word “or”.</p> <p>In Article 203(1)(a) the word “and”.</p> <p>In Article 245(2)(f) the words “before an industrial tribunal”.</p> <p>In Schedule 1 the entries relating to Article 62(2), (3) and (4) of the Trade Union and Labour Relations (Northern Ireland) Order 1995.</p> <p>In Part II of Schedule 2, paragraph 13.</p>
1996 NI 18.	The Industrial Tribunals (Northern Ireland) Order 1996.	<p>Article 6(3)(e), apart from the word “and”.</p> <p>In Article 7(1)(a) the word “and”, where it occurs for the third time.</p> <p>Article 9(3)(f)(i).</p> <p>In Article 9(4)(a), the word “or”, where it occurs for the second time.</p>
1997 NI 6.	The Race Relations (Northern Ireland) Order 1997.	In Schedule 2, paragraph 8(1) and (2).
1997 NI 20.	The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997.	In Schedule 2, in paragraph 13 the words “and Article 142(1) of that Order (dismissal procedures agreements)”.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made only for purposes corresponding to those of the Employment Rights (Dispute Resolution) Act 1998 (other than those of section 1).

Part II permits new procedural rules to be introduced to streamline certain procedures of industrial tribunals and extends their jurisdiction.

Part III provides for the Labour Relations Agency to draw up an arbitration scheme for the resolution of unfair dismissal disputes. It also amends the law relating to compromise agreements and dismissal procedures agreements and provides for an extension of the powers of the Agency.

Part IV introduces measures to encourage the use by employees and employers of internal appeal procedures in cases of dismissal and makes provision about compensation in cases of unfair dismissal which also involve disability discrimination.