

2021 No. 103

EMPLOYMENT

The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021

Made - - - - *19th April 2021*

Coming into operation - *31st May 2021*

Approved by resolution of the Assembly on 21st June 2021

The Department for the Economy(a) makes the following Order in exercise of the powers conferred by Articles 24(2), 24(4)(c) and (d), 24(5) and Article 39(3) of the Employment Relations (Northern Ireland) Order 1999(b) and now vested in it(c).

Citation and Commencement

1. This Order may be cited as the Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021 and comes into operation on 31st May 2021.

Amendments of the Employment Rights (Northern Ireland) Order 1996

2. The Employment Rights (Northern Ireland) Order 1996(d) is amended as follows.

Amendment of Article 68

3. In Article 68 (health and safety cases)—

(a) in paragraph (1), omit sub-paragraphs (d) and (e);

(b) after paragraph (1) insert—

“(1A) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the worker’s employer done on the ground that—

(a) Formerly the Department of Economic Development; see Article 3(5) of the Departments (Northern Ireland) Order 1999 S.I. 1999/283 (N.I. 1) and section 1(3) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)).

(b) S.I. 1999/2790 (N.I. 9); Article 24(5) was amended by Article 19 of the Employment Relations (Northern Ireland) Order 2004 S.I. 2004/3078 (N.I. 19).

(c) The functions of the Department of Economic Development under the Employment Relations (Northern Ireland) Order 1999 were transferred to the Department of Higher and Further Education, Training and Employment by S.R. 1999 No. 481, Article 4(b) and Schedule 2, Part II. The Department of Higher and Further Education, Training and Employment was renamed the Department for Employment and Learning by 2001 c. 15 (N.I.), section 1(1), and following the dissolution of that department by the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)), section 1(10), its functions under the Employment Relations Order (Northern Ireland) Order 1999 were transferred to the Department for the Economy by S.R. 2016 No. 76, Article 6(1)(c).

(d) S.I. 1996/1919 (N.I. 16).

- (a) in circumstances of danger which the worker reasonably believed to be serious and imminent and which the worker could not reasonably have been expected to avert, the worker left (or proposed to leave) or (while the danger persisted) refused to return to the worker's place of work or any dangerous part of the worker's place of work, or
- (b) in circumstances of danger which the worker reasonably believed to be serious and imminent, the worker took (or proposed to take) appropriate steps to protect the worker or other persons from the danger.”;
- (c) in paragraph (2)—
 - (i) for “(1)(e)” substitute “(1A)(b)”;
 - (ii) for “an employee” substitute “a worker”;
- (d) in paragraph (3)—
 - (i) for “An employee” substitute “A worker”;
 - (ii) for “(1)(e)” substitute “(1A)(b)”;
 - (iii) for “the employee” substitute “the worker”;
- (e) in paragraph (4) after “does not apply where the” insert “worker is an employee and the”.

Amendment of Article 71

4. In Article 71 (complaints to industrial tribunals)—

- (a) in paragraph (1), for “68” substitute “68(1)”;
- (b) after paragraph (1) insert—

“(1YA) A worker may present a complaint to an industrial tribunal that the worker has been subjected to a detriment in contravention of Article 68(1A).”;
- (c) in paragraph (2), after “paragraph (1),” insert “(1YA).”.

Amendment of Article 72

5. In Article 72 (remedies)—

- (a) in paragraph (1), after “Article 71(1),” insert “(1YA).”;
- (b) in paragraph (2), after “Subject to paragraphs” insert “(5ZA).”;
- (c) after paragraph (5) insert—

“(5ZA) Where—

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

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

Amendment of Article 247

6. In Article 247 (remedy for infringement of certain rights) after paragraph (1) insert—

- “(1YA) In relation to the right conferred by Article 68(1A), the reference in paragraph (1) to an employee has effect as a reference to a worker.”.

Transitional and saving provision

7.—(1) A worker is not to be regarded as having been subjected to a detriment in contravention of Article 68(1A) of the Employment Rights (Northern Ireland) Order 1996 if the date of the relevant act or failure to act, or the last of a series of similar relevant acts or failures to act, occurred before commencement day.

(2) If the date of the last of a series of similar relevant acts or failures to act occurs on or after commencement day, the fact that a relevant act or failure to act in that series occurred before commencement day does not prevent it from being taken into account in determining whether the worker has been subjected to a detriment in contravention of Article 68(1A) of the Employment Rights (Northern Ireland) Order 1996.

(3) The repeal by this Order of Article 68(1)(d) and (e) does not prevent a complaint under Article 71 that an employee has been subjected to detriment in contravention of Article 68(1)(d) or (e) from being presented or continued on or after commencement day if the date of the relevant act or failure to act, or the last of a series of similar relevant acts or failures to act, occurred before commencement day.

(4) In this article—

“commencement day” means the day on which this Order comes into operation;

“relevant act or failure to act” means—

- (a) in relation to Article 68(1) of the Employment Rights (Northern Ireland) Order 1996, an act, or deliberate failure to act, by an employer done on the ground set out in Article 68(1)(d) or (e) of that Order;
- (b) in relation to Article 68(1A) of the Employment Rights (Northern Ireland) Order 1996, an act, or deliberate failure to act, by an employer done on the ground set out in Article 68(1A)(a) or (b) of that Order.

(5) Article 71(4) of the Employment Rights (Northern Ireland) Order 1996 applies to paragraphs (1) and (2) as it applies to Article 71(3) of that Order.

Sealed with the Official Seal of the Department for the Economy on 19th April 2021.



Colin Jack
A senior officer of the
Department for the Economy

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Article 68 of the Employment Rights (Northern Ireland) Order 1996 (“the Principal Order”) to extend the rights conferred previously under Article 68(1)(d) and (e) not to be subjected to a detriment in health and safety cases to workers, as defined in Article 3(3) of the Principal Order. Those rights were previously conferred only upon employees, as defined in Article 3(1) of the Principal Order.

The rights conferred are for a worker to not be subjected to a detriment by the worker’s employer for leaving or refusing to return to the worker’s workplace or for taking steps to protect the worker in circumstances of danger which the worker reasonably believes to be serious and imminent.

Article 4 makes corresponding amendments to enforcement provisions and Articles 5 and 6 make corresponding amendments to remedies provisions in the Principal Order.

Article 7 is a transitional and saving provision in respect of the repeal of Article 68(1)(d) and (e) and the insertion of the new Article 68(1A).

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