
STATUTORY INSTRUMENTS

1976 No. 1043 (N.I. 16)

NORTHERN IRELAND

Industrial Relations (Northern Ireland) Order 1976

Laid before Parliament in draft

Made

2nd July 1976

Coming into operation on days to be appointed under Article 1



LONDON

HER MAJESTY'S STATIONERY OFFICE: 1976

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At the Court at Buckingham Palace, the 2nd day of July 1976

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), 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:—

(a) 1974 c. 28.

PART I

INTRODUCTORY

Title and commencement

1. This Order may be cited as the Industrial Relations (Northern Ireland) Order 1976 and shall come into operation on such day or days as the Head of the Department of Manpower Services may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (a) shall apply 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—

“act” and “action” each includes omission and references to doing an act or taking action shall be construed accordingly;

“the Act of 1965” means the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (b);

“the Agency” means the Labour Relations Agency established by Article 4;

“collective agreement” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers’ associations and relating to one or more of the matters mentioned in Article 3 (1);

“collective bargaining” means negotiations relating to or connected with one or more of the matters specified in Article 3 (1);

“contract of employment” means a contract of service or of apprenticeship, whether it is express or implied and (if it is express) whether it is oral or in writing;

“dismiss”, “dismissal” and “effective date of termination” shall be construed in accordance with Article 21;

“the Department” means the Department of Manpower Services;

“dismissal procedures agreement” means an agreement in writing with respect to procedures relating to dismissal made by or on behalf of one or more independent trade unions and one or more employers or employers’ associations;

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment, otherwise than in police service;

“employer” (subject to paragraph (3))—

(a) where the reference is to an employer in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed, and

(b) in any other case, means a person regarded in that person’s capacity as one for whom one or more workers work, or have worked or normally work or seek to work;

“employers’ association” (subject to paragraph (3)) means an organisation (whether permanent or temporary) which either—

(a) consists wholly or mainly of employers or individual proprietors of one or more descriptions and is an organisation whose principal

(a) 1954 c. 33 (N.I.).

(b) 1965 c. 19 (N.I.).

purposes include the regulation of relations between employers of that description or those descriptions and workers or trade unions; or

(b) consists wholly or mainly of—

(i) constituent or affiliated organisations which fulfil the conditions specified in sub-paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or

(ii) representatives of such constituent or affiliated organisations;

and in either case is an organisation whose principal purposes include the regulation of relations between employers and workers or between employers and trade unions, or include the regulation of relations between its constituent or affiliated organisations;

“the Head of the Department” means the Head of the Department of Man-power Services;

“independent trade union” means a trade union which—

(a) is not under the domination or control of an employer or a group of employers or of one or more employers’ associations; and

(b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

and, in relation to a trade union, “independence” and “independent” shall be construed accordingly;

“individual proprietor” means an individual who is the owner of an under-taking;

“job”, in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed;

“officer”, in relation to a trade union or an employers’ association, includes any member of the governing body of that union or association and any trustee of any fund applicable for the purposes of that union or association;

“official”, in relation to a trade union, means any person who is an officer of the union or of a branch or section of the union or who (not being such an officer) is a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members, whom he is to represent;

“police service” means service—

(a) as a member of the Royal Ulster Constabulary;

(b) as a member of the Royal Ulster Constabulary Reserve;

(c) in any other capacity by virtue of which a person has the powers or privileges of a constable;

“position”, in relation to an employee, means the following matters taken as a whole, that is to say, his status as an employee, the nature of his work and his terms and conditions of employment;

“procedural agreement” means so much of a collective agreement as provides for procedures for the conduct of relations between workers or

their representatives and employers and includes (without prejudice to the generality of the foregoing) so much of such an agreement as relates to—

- (a) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, terms and conditions of employment;
- (b) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, other questions arising between an employer or group of employers and one or more workers or trade unions;
- (c) negotiating rights;
- (d) facilities for officials of trade unions or other organisations of workers;
- (e) procedures relating to dismissal;
- (f) procedures relating to matters of discipline other than dismissal;
- (g) procedures relating to grievances of individual workers;
- (h) disclosure of information;
- (i) redundancy;
- (j) safety and health at work; and
- (k) promotion;

“statutory provision” has the meaning assigned to it by section 1 (f) of the Interpretation Act (Northern Ireland) 1954;

“trade dispute” has the meaning assigned to it by Article 3;

“trade union” means an organisation (whether permanent or temporary) which either—

- (a) consists wholly or mainly of workers of one or more descriptions and is an organisation whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers’ associations; or
- (b) consists wholly or mainly of—
 - (i) constituent or affiliated organisations which fulfil the conditions specified in sub-paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
 - (ii) representatives of such constituent or affiliated organisations;and in either case is an organisation whose principal purposes include the regulation of relations between workers and employers or between workers and employers’ associations, or include the regulation of relations between its constituent or affiliated organisations;

“union membership agreement” means an agreement or arrangement which—

- (a) is made by or on behalf of, or otherwise exists between, one or more independent trade unions and one or more employers or employers’ associations; and
- (b) relates to employees of an identifiable class; and
- (c) has the effect in practice of requiring the employees for the time being of the class to which it relates (whether or not there is a condition to that effect in their contract of employment) to be or become a member

of the union or one of the unions which is or are parties to the agreement or arrangement or of another specified independent trade union;

and references in this definition to a trade union include references to a branch or section of a trade union;

and a trade union is specified for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified;

“worker” (subject to paragraph (3)) means an individual regarded in whichever (if any) of the following capacities is applicable to him, that is to say, as a person who works or normally works or seeks to work—

(a) under a contract of employment; or

(b) under any other contract (whether express or implied, and, if express, whether oral or in writing) whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his; or

(c) in employment under or for the purposes of a Northern Ireland department or a department of the Government of the United Kingdom (otherwise than as a member of the naval, military or air forces of the Crown or of any women’s service administered by the Defence Council) in so far as any such employment does not fall within sub-paragraph (a) or (b),

otherwise than in police service.

(3) Without prejudice to the generality of the definitions in paragraph (2), in this Order—

(a) “worker” includes an individual regarded in his capacity as one who works or normally works or seeks to work as a person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services, in accordance with arrangements made by a Health and Social Services Board under Articles 56, 61, 62 or 63 of the Health and Personal Social Services (Northern Ireland) Order 1972 (a);

(b) “employer” includes any Health and Social Services Board in accordance with whose arrangements a person provides or has provided or normally provides or seeks to provide any such service as aforesaid;

(c) “employers’ association” includes a combination of employers and employers’ associations.

(4) Subject to paragraph (5), in this Order “successor”, in relation to the employer of an employee, means a person who, in consequence of a change occurring (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the undertaking or of part of the undertaking for the purposes of which the employee was employed, has become the owner of that undertaking or of that part of it, as the case may be.

(5) Paragraph (4) shall have effect (subject to the necessary modifications) in relation to a case where—

(a) the person by whom an undertaking or part of an undertaking is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change, or

(a) S.I. 1972/1265 (N.I. 14).

- (b) the persons by whom an undertaking or part of an undertaking is owned immediately before a change (whether as partners, trustees or otherwise) include the persons by whom, or include one or more of the persons by whom, it is owned immediately after the change,

as that paragraph has effect where the previous owner and the new owner are wholly different persons; and any reference in this Order to a successor of an employer shall be construed accordingly.

(6) For the purposes of this Order any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and in this Order “associated employer” shall be construed accordingly.

(7) In this Order any reference to redundancy or to being redundant shall be construed as a reference to the existence of one or other of the facts specified in paragraphs (a) and (b) of section 11 (2) of the Act of 1965.

(8) For the purposes of this Order employees are to be treated in relation to a union membership agreement, as belonging to the same class if they have been identified as such by the parties to the agreement, and employees may be so identified by reference to any characteristics or circumstances whatsoever.

(9) For the purposes of this Order it is immaterial whether the law which (apart from this Order) governs any person’s employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

Definition of trade dispute

3.—(1) In this Order “trade dispute” means a dispute between employers and workers, or between workers and workers, which is connected with one or more of the following, that is to say—

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment as between workers or groups of workers;
- (d) matters of discipline;
- (e) the membership or non-membership of a trade union on the part of a worker;
- (f) facilities for officials of trade unions;
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers’ associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.

(2) A dispute between a Minister of the Crown or Department of the Government of Northern Ireland and any workers shall, notwithstanding that the Minister or the Department is not the employer of those workers, be treated for the purposes of this Order as a dispute between employer and those workers if the dispute relates—

- (a) to matters which have been referred for consideration by a joint body on which, by virtue of any provision made by or under any statutory provision, that Minister or that Department is represented; or

(b) to matters which cannot be settled without that Minister or that Department exercising a power conferred by or under any statutory provision.

(3) There is a trade dispute for the purposes of this Order even though it relates to matters occurring outside Northern Ireland.

(4) A dispute to which a trade union or employers' association is a party shall be treated for the purposes of this Order as a dispute to which workers or, as the case may be, employers are parties.

(5) An act, threat or demand done or made by one person or organisation against another which, if resisted, would have led to a trade dispute with that other, shall, notwithstanding that because that other submits to the act or threat or accedes to the demand no dispute arises, be treated for the purposes of this Order as being done or made in contemplation of a trade dispute with that other.

(6) In this Article—

“employment” includes any relationship whereby one person personally does work or performs services for another;

“worker”, in relation to a dispute to which an employer is a party, includes any worker even if not employed by that employer.

(7) In the Conspiracy and Protection of Property Act 1875 (a), the Trade Disputes Act 1906 (b) and the Industrial Courts Act 1919 (c) “trade dispute” has the same meaning as in this Order.

PART II

THE LABOUR RELATIONS AGENCY

Constitution of the Agency

The Labour Relations Agency

4.—(1) There shall be established a body to be called the Labour Relations Agency (in this Order referred to as “the Agency”).

(2) The constitution of the Agency shall be as provided in that behalf in Part I of Schedule 1, and the supplementary provisions contained in Part II of that Schedule shall have effect with respect to the Agency.

Functions of the Agency

General function of the Agency

5.—(1) It shall be the duty of the Agency to promote the improvement of industrial relations, and in particular to encourage the extension of collective bargaining and the development and, where necessary, the reform of collective bargaining machinery.

(2) Without prejudice to the generality of paragraph (1), the Agency shall exercise such functions as are conferred on it by or under the following provisions of this Order.

Functions of the Agency in relation to trade disputes

6.—(1) Where a trade dispute exists (other than a trade dispute to which Article 7 applies), the Agency may—

(a) inquire into the causes and circumstances of the trade dispute;

(a) 1875 c. 86. (b) 1906 c. 47. (c) 1919 c. 69.

- (b) form a view on the matter in dispute;
 - (c) express, either publicly or to the parties to the dispute, the view it has formed on the matter in dispute;
 - (d) assist the parties to the trade dispute to achieve a settlement of the dispute by conciliation or otherwise;
 - (e) at any time, with the agreement of the parties and without prejudice to the power of the Department or any other government department under any statutory provision to refer any trade dispute to arbitration, refer the matter for settlement to the arbitration of one or more persons appointed by the Agency.
- (2) The Agency shall not exercise its functions under paragraph (1) unless—
- (a) the Agency is satisfied—
 - (i) that the parties to the trade dispute have made genuine efforts to secure a settlement of the trade dispute through such procedures or arrangements as exist or as have been agreed between the parties for the settlement of trade disputes; and
 - (ii) that the parties have exhausted such procedures or arrangements, or that the procedures or arrangements are inadequate to achieve a settlement of the trade dispute; and
 - (b) the Department has informed the Agency that either—
 - (i) it has exercised its powers of conciliation under the Conciliation Act 1896 (a) or the Industrial Courts Act 1919 or has otherwise attempted to resolve the trade dispute and is satisfied that it is unlikely to be able to assist the parties to achieve a settlement of the dispute within a reasonable time; or
 - (ii) it does not consider it appropriate to exercise such powers or otherwise attempt to resolve the dispute and does not propose to do so.

(3) Where the Department apprehends that a trade dispute may occur it may refer the matter to the Agency which may take all steps which it considers appropriate for avoiding such trade dispute.

(4) For the purpose of exercising its powers under paragraph (1) (e) the Agency may maintain a register of persons who, having regard to their knowledge and experience, would, in the opinion of the Agency, be suitable for appointment by the Agency as arbitrators.

(5) The Agency may pay to persons appointed as arbitrators under paragraph (1) (e) such fees and such allowances for expenses as the Agency, with the approval of the Department and the Department of Finance, may determine.

Recognition of trade unions

7.—(1) Where a trade dispute exists which is related to or connected with the recognition by an employer of the right of a trade union to represent workers in any negotiation or consultation, or in the carrying out of other procedures, relating to or connected with any of the matters mentioned in Article 3 (1) the Agency may, where it thinks fit, or at the request of an independent trade union or an employer who is a party to the dispute or of the Department—

- (a) inquire into the causes and circumstances of the trade dispute;
- (b) form a view on the matter in dispute;

(a) 1896 c. 30.

- (c) assist the parties to the trade dispute to achieve a settlement of the dispute by conciliation or otherwise;
- (d) where it has been unable to obtain the agreement of the parties as to how the trade dispute may be settled, make a written recommendation to the parties to the trade dispute as to whether the employer should recognise the trade union;
- (e) make such other recommendations as the Agency thinks fit;
- (f) if of the opinion that the trade dispute cannot be settled without the agreement of more than one trade union, refer the matter to such machinery as exists for the settlement of trade disputes between trade unions.

(2) In exercising its functions under paragraph (1) the Agency may conduct such investigations as the Agency considers necessary for the purpose of enabling it to make a recommendation under paragraph (1) (d) or (e) and in so doing may—

- (a) make arrangements for ballots of workers to be conducted in such manner as the Agency thinks fit; and
- (b) request any person who appears to the Agency to have any knowledge of the subject-matter of the investigation to furnish, in writing or otherwise, such particulars in relation thereto as the Agency may require, and, where necessary, to attend before the Agency and provide such information as the Agency may require.

(3) Where the Agency makes a recommendation under paragraph (1) (d) or (e) it shall state the grounds for the recommendation and where the Agency recommends that a trade union should be recognised by an employer such recommendation shall specify—

- (a) the employer or employers and the trade union or unions to which it relates;
- (b) the description or descriptions of workers in respect of which recognition is recommended;
- (c) whether the recommendation is for recognition generally or in respect of one or more specified matters;
- (d) the level or levels at which recognition is recommended.

(4) A recommendation for recognition may be subject to such conditions, to be complied with on the part of the trade union, as the Agency thinks fit, and any conditions shall be specified in the recommendation.

(5) The Agency shall send a copy of its recommendation to every trade union and employer concerned in the trade dispute and to such other persons as it thinks fit.

Report of failure to comply with Agency's recommendation

8.—(1) Where the Agency recommends under Article 7 (1) (d) that a trade union should be recognised by an employer and, in the opinion of that trade union, the employer fails, wholly or in part, to comply with that recommendation so far as it relates to employees, the trade union may report such failure to the Agency.

(2) Where a report is made to the Agency under paragraph (1), the Agency shall conduct such further investigations as it considers necessary and, if it is satisfied that—

- (a) any conditions specified in the recommendation under Article 7 (4) have been complied with on the part of the trade union; and
- (b) that the employer has failed, wholly or in part, to comply with the Agency's recommendation within such time as the Agency considers reasonable,

the Agency shall issue to the trade union a certificate to that effect.

- (3) A certificate issued by the Agency under paragraph (2) shall specify—
 - (a) the description or descriptions of employees in relation to whom the employer has failed to comply with the recommendation; and
 - (b) the matters in relation to which the employer has failed to comply with the recommendation.

(4) Where a certificate is issued to a trade union under paragraph (2) the Department shall, if requested by that trade union refer to the Industrial Court constituted under Part I of the Industrial Courts Act 1919 any claim by that trade union that in respect of one or more descriptions of employees covered by the Agency's recommendation their contracts of employment should include the terms and conditions specified in the claim.

(5) The Industrial Court shall examine a claim referred to it under paragraph (4) and may make an award that in respect of any description of employees specified in the certificate under paragraph (3) (a) the employer shall observe either—

- (a) the terms and conditions specified in the claim by the trade union in accordance with paragraph (4); or
- (b) other terms and conditions which the Court considers appropriate,

being in either case terms and conditions falling within the scope of the matters specified in the certificate under paragraph (3) (b).

(6) Any terms and conditions which by an award under paragraph (5) the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee, as from the date specified in the award, except in so far as they are superseded or varied—

- (a) by a subsequent award under this Article;
- (b) by a collective agreement between the employer and the union for the time being representing that employee; or
- (c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.

(7) Where—

- (a) by virtue of any other statutory provision providing for minimum remuneration or terms and conditions a contract of employment is to have effect as modified by an award, order or other instrument under that statutory provision, and
- (b) by virtue of an award under this Article any terms and conditions are to have effect as part of that contract,

that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this Article whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.

(8) No award shall be made under this Article in respect of any terms and conditions of employment which are fixed by virtue of any statutory provision.

Notification of procedural agreements

9.—(1) The Agency may request an employer to submit to it copies, or particulars, of procedural agreements to which he is a party and may receive and record such procedural agreements or particulars thereof.

(2) The Agency, after examining any procedural agreement or the particulars of any procedural agreement submitted to it under paragraph (1) may make such inquiries and seek such further information concerning that procedural agreement as the Agency thinks fit.

(3) The Agency shall deliver to the Department a copy of any procedural agreement or of any particulars of a procedural agreement submitted to it under paragraph (1).

Functions of the Agency under Wages Councils Act (Northern Ireland) 1945

10. The Agency shall perform those functions under the Wages Councils Act (Northern Ireland) 1945 (a) which immediately before the coming into operation of this Article were performed by a commission of inquiry.

Review of collective bargaining arrangements

11.—(1) The Agency may review existing arrangements for the conduct of collective bargaining and may make recommendations to trade unions, employers and employers' associations concerning the introduction of arrangements for the conduct of collective bargaining or the improvement of existing arrangements.

(2) The Agency shall notify the Department of any recommendations made under paragraph (1).

(3) The Agency may review progress towards the institution of suitable arrangements for the conduct of collective bargaining and may send reports concerning such progress to appropriate trade unions, employers and employers' associations.

Industrial relations training

12.—(1) The Agency may—

- (a) review arrangements for industrial relations training in Northern Ireland;
- (b) advise employers, trade unions and the Department on training needs;
- (c) make recommendations to employers, trade unions, the Department and other interested bodies as to how training needs may best be met and in so doing may devise and propose training programmes;
- (d) co-ordinate by agreement, the activities of employers, employers' associations, trade unions and other interested bodies in the provision of industrial relations training in order to secure the most advantageous use of training resources for the fulfilment of identified training needs;
- (e) review progress in the fulfilment of identified training needs; and
- (f) obtain information about, and encourage the utilisation of developments in, training methods and techniques in respect of industrial relations training.

(a) 1945 c. 21 (N.I.).

(2) The Department may make a grant of such amount as the Department, with the approval of the Department of Finance, may determine towards defraying the expenses incurred by any undertaking or organisation in connection with industrial relations training.

(3) In this Article “industrial relations training” means training in any matter pertaining to the conduct of industrial relations.

Industrial relations research

13. Where the Agency thinks fit, or at the request of the Department, an employer, an employers’ association or a trade union, the Agency may conduct research into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.

Industrial relations advice

14.—(1) Where the Agency thinks fit, it may give advice on any matter pertaining to the conduct of industrial relations to any employer, employers’ association, trade union or other body.

(2) Where the Agency thinks fit, it may provide to employers, employers’ associations, trade unions and other interested bodies information relating to good industrial relations practice.

Collective bargaining in low-pay sectors

15.—(1) The Agency may, at the request of the Department, an employer, an employers’ association or a trade union, examine sectors of employment in which—

- (a) no wages council exists with respect to the workers and their employer;
- (b) claims in respect of terms and conditions of employment cannot (for whatever reason) be reported under Part I of the Terms and Conditions of Employment Act (Northern Ireland) 1963 (a) (in this Article referred to as “the Act of 1963”); and
- (c) in the opinion of the Agency the level of remuneration is low in relation to the work performed.

(2) The Agency may make recommendations as to how difficulties arising from the circumstances mentioned in paragraph (1) (a) and (b) may be overcome and may review progress towards the overcoming of such difficulties.

(3) Where—

- (a) the Agency recommends under paragraph (2) the creation of a temporary institution to provide terms and conditions of employment for workers in any sector of employment; and
- (b) any such recommendation is approved by the Department;

the Department and the Agency shall make such arrangements as they consider necessary to create such temporary institution.

(4) Where it appears to the Department that a temporary institution created under paragraph (3) is no longer necessary to provide terms and conditions of employment for workers in any sector of employment, the Department, after consultation with the Agency, may give written directions providing for the dissolution of that institution on such date as is specified in the directions.

(a) 1963 c. 2 (N.I.).

(5) In Part I of the Act of 1963 (enforcement of recognised terms and conditions) after section 5 there shall be inserted the following section:—

“Terms and conditions provided by temporary institutions.

5A.—(1) Where a temporary institution created under Article 15 (3) of the Industrial Relations (Northern Ireland) Order 1976 provides terms and conditions of employment for workers in any sector of employment, a claim may be duly reported to the Department under this Part where it is alleged that as respects any worker in that sector an employer engaged in that sector is not observing the terms and conditions of employment so provided.

(2) Where a claim is reported by virtue of subsection (1), the foregoing provisions of this Part shall have effect subject to the following modifications, namely—

(a) in section 1 (2) at the beginning there shall be inserted the words “Except as provided by section 5A,”;

(b) in section 2 (1) for the words from “by an organisation” to the end there shall be substituted the words “by an organisation or association represented on a temporary institution referred to in Article 15 (3) of the Industrial Relations (Northern Ireland) Order 1976 which has not been dissolved under paragraph (4) of that Article.”;

(c) in section 4 for the words “the recognised terms or conditions” (in the first place where they occur) there shall be substituted the words “the terms and conditions provided by the temporary institution referred to in Article 15 (3) of the Industrial Relations (Northern Ireland) Order 1976” and in the second place where they occur there shall be substituted the words “the terms and conditions so provided” and for the words “of the relevant description” there shall be substituted the words “for whom such terms and conditions were provided”.

(6) Claims shall not be precluded from being reported under Part I of the Act of 1963 by reason only that they are in respect of workers whose remuneration or minimum remuneration is fixed under the Wages Councils Act (Northern Ireland) 1945; and accordingly, in section 1 (2) of the Act of 1963, in paragraphs (a) and (c) after the words “other than” in each place where they occur there shall be inserted the words “the Wages Councils Act (Northern Ireland) 1945 or”.

Power to confer additional functions on Agency

16.—(1) Where it appears to the Head of the Department, after consultation with such organisations representative of employers and of employees as appear to him to be appropriate, that it is desirable that the Agency exercise additional functions relating to or connected with industrial relations, the Head of the Department may, by order subject to affirmative resolution, make provision for the purpose of—

(a) conferring on the Agency such additional functions as are prescribed in the order;

(b) transferring to the Agency industrial relations functions of the Department;

(c) extending the powers of the Agency conferred on it by or under this Order to enable and facilitate the exercise by the Agency, in place of the Department, of industrial relations functions of the Department.

(2) Without prejudice to the generality of paragraph (1) an order under that paragraph may provide for such incidental, consequential, transitional or supplementary matters (including the amendment or repeal of any provision of this Order or of any other statutory provision) as appear to the Head of the Department to be necessary for the purpose of facilitating the exercise by the Agency of any additional functions by virtue of the order or for otherwise giving full effect to the provisions of the order.

(3) In this Article "industrial relations functions of the Department" means the functions exercisable, for the time being, by the Department under or for the purposes of the Conciliation Act 1896, the Industrial Courts Acts (Northern Ireland) 1919 and 1963 or any other statutory provision (including this Order) relating to industrial relations.

Supplementary

Accounts and audit

17.—(1) The Agency shall keep proper accounts in such form as may be approved by the Department, and proper records in relation to the accounts and shall prepare in respect of the period ending on 31st March 1977 and in respect of each subsequent financial year a statement of accounts in such form as the Department, with the approval of the Department of Finance, may direct.

(2) The accounts of the Agency shall be audited by auditors appointed by the Agency with the approval of the Department and shall be vouched to the satisfaction of such auditors.

(3) The Agency shall, at such time in each year as the Department may direct, transmit copies of the annual statement of accounts, certified by the auditors, to the Department and to the Comptroller and Auditor-General.

(4) The Comptroller and Auditor-General shall examine a copy of each annual statement of accounts and shall make a report thereon and shall send copies of that report to the Department and may in connection with such examination examine any accounts kept by the Agency and any records relating thereto.

Reports of the Agency

18.—(1) The Agency shall as soon as possible—

(a) within a period of three months after the 31st March 1977; and

(b) within a period of three months after the end of each subsequent financial year,

make to the Head of the Department a report, in such form and containing such information as the Department may direct, on the performance of its functions in the case of sub-paragraph (a) up to 31st March 1977, and in the case of sub-paragraph (b) during the financial year mentioned in that sub-paragraph.

(2) The Head of the Department shall lay before the Assembly a copy of each report made to him under this Article together with a copy of each annual statement of accounts transmitted to the Department under Article 17 (3) and of the report made by the Comptroller and Auditor-General thereon under Article 17 (4).

Expenses of the Agency

19. For the purpose of enabling the Agency to carry out its functions under this Order, the Department shall pay to the Agency such sums as the Department may, with the approval of the Department of Finance, determine.

PART III
RIGHTS OF EMPLOYEES
Unfair Dismissal

Right of employee not to be unfairly dismissed

20.—(1) In every employment to which this Article applies every employee shall have the right not to be unfairly dismissed by his employer.

(2) This Article applies to every employment except in so far as its application is excluded by or under any provision of this Order.

Meaning of “dismissal”

21.—(1) In this Order “dismissal” and “dismiss” shall be construed in accordance with the following provisions of this Article.

(2) Subject to paragraph (3) an employee shall be treated for the purposes of this Order as dismissed by his employer, if, but only if,—

- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
- (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
- (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer’s conduct.

(3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the period of that notice, the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer’s notice is due to expire, the employee shall for the purposes of this Order be taken to be dismissed by his employer, and the reasons for the dismissal shall be taken to be the reasons for which the employer’s notice is given.

(4) Subject to paragraph (5), in this Order “the effective date of termination”—

- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires;
- (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
- (c) in relation to an employee who is employed under a contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.

(5) Where the notice required to be given by an employer by section 1 (1) of the Act of 1965 (minimum period of notice) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the effective date of termination as defined by paragraph (4), that later date shall be treated as the effective date of termination in relation to the dismissal for the purposes of Articles 24 (1) (a), 34 (3), 35 (5) and 48 (2).

Fair and unfair dismissal

22.—(1) In determining for the purposes of this Order whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—

- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
- (b) that it was a reason falling within paragraph (2), or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(2) In paragraph (1) (b) the reference to a reason falling within this paragraph is a reference to a reason which—

- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, or
- (b) related to the conduct of the employee, or
- (c) was that the employee was redundant, or
- (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under a statutory provision.

(3) Where the employer has fulfilled the requirements of paragraph (1), then, subject to Article 23, the question whether the dismissal was fair or unfair shall be determined in accordance with the following provisions of this Article.

(4) For the purposes of this Order the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

- (a) was, or proposed to become, a member of an independent trade union;
- (b) had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union; or
- (c) had refused, or proposed to refuse, to become or remain a member of a trade union which was not an independent trade union.

(5) In paragraph (4), “appropriate time” in relation to an employee taking part in the activities of a trade union, means time which either—

- (a) is outside his working hours, or
- (b) is a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in those activities;

and in this paragraph “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(6) Dismissal of an employee by an employer shall be regarded as fair for the purposes of this Order if—

- (a) it is the practice, in accordance with a union membership agreement for employees for the time being of the same class as the dismissed employee to belong to a specified independent trade union, or to one of a number of specified independent trade unions; and
- (b) the reason for the dismissal was that the employee was not a member of the specified union or one of the specified unions, or had refused or

proposed to refuse to become or remain a member of that union or one of those unions;
unless the employee genuinely objects on grounds of religious belief to being a member of any trade union whatsoever, in which case the dismissal shall be regarded as unfair.

(7) For the purposes of paragraph (6) a union shall be treated as specified for the purposes of or in relation to a union membership agreement (in a case where it would not otherwise be so treated) if—

- (a) the Agency has made a recommendation under Article 7 (1) for recognition of that union covering the employee in question; or
- (b) the Agency is exercising, or has been requested to exercise, its powers under Article 7 in relation to a dispute relating to or connected with recognition of that union covering that employee and the dispute has not been settled or otherwise disposed of by the Agency under that Article.

(8) Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of paragraph (4) or (6) is hereafter in this Order referred to as an inadmissible reason.

(9) Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and either—

- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was an inadmissible reason; or
- (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,

then, for the purposes of this Order, the dismissal shall be regarded as unfair.

(10) Subject to paragraphs (4) to (9), the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether the employer can satisfy the tribunal that in the circumstances (having regard to equity and the substantial merits of the case) he acted reasonably in treating it as a sufficient reason for dismissing the employee.

(11) In this Article, references to a trade union include references to a branch or section of a trade union, and, in relation to an employee—

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

Dismissal in connection with a lock-out, strike or other industrial action

23.—(1) The provisions of this Article shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer where at the date of dismissal—

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

(2) In such a case an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—

- (a) that one or more relevant employees of the same employer have not been dismissed, or
- (b) that one or more such employees have been offered re-engagement, and that the employee concerned has not been offered re-engagement.

(3) Where it is shown that the condition referred to in paragraph (2) (b) is fulfilled, the provisions of Article 22 shall have effect as if in that Article for any reference to the reason or principal reason for which the employee was dismissed there were substituted a reference to the reason or principal reason for which he has not been offered re-engagement.

(4) Article 59 (5) shall apply in relation to a complaint to which paragraph (3) applies as if for references to the effective date of termination there were substituted a reference to the first date on which any relevant employee was offered re-engagement.

(5) In this Article—

(a) “date of dismissal” means—

- (i) where the employee’s contract of employment was terminated by notice, the date on which the employer’s notice was given, and
- (ii) in any other case, the effective date of termination;

(b) “relevant employees” means—

- (i) in relation to a lock-out, employees who were directly interested in the trade dispute in contemplation or furtherance of which the lock-out occurred, and
- (ii) in relation to a strike or other industrial action, employees who took part in it; and

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

Qualifying period and upper age limit

24.—(1) Subject to paragraphs (2) and (3), Article 20 does not apply to the dismissal of an employee from any employment if the employee—

- (a) was not continuously employed for a period of not less than 26 weeks ending with the effective date of termination, or
- (b) on or before the effective date of termination attained the age which, in the undertaking in which he was employed, was the normal retiring age for an employee holding the position which he held, or, if a man, attained the age of sixty-five, or, if a woman, attained the age of sixty;

but this Article shall have effect in a case where the effective date of termination falls within the period of six months beginning with the date on which this Article comes into operation as if the reference in sub-paragraph (a) to 26 weeks were a reference to 52 weeks.

(2) Paragraph (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was an inadmissible reason.

(3) The Department may by order add to, vary, revoke or exclude the operation of any of the provisions of paragraph (1).

Exclusion of certain contracts for a fixed term

25. Article 20 does not apply—

- (a) to dismissal from employment under a contract for a fixed term of two years or more, where the contract was made before the coming into operation of this Article and is not a contract of apprenticeship, and the dismissal consists only of the expiry of that term without its being renewed, or
- (b) to dismissal from employment under a contract for a fixed term of two years or more, where the dismissal consists only of the expiry of that term without its being renewed, if before the term so expires the employee has agreed in writing to exclude any claim in respect of rights under that Article in relation to that contract.

Exclusion in respect of dismissal procedures agreement

26.—(1) An application may be made jointly to the Department by all the parties to a dismissal procedures agreement to designate that agreement for the purposes of this Article.

(2) On any such application the Department, after consultation with the Agency, may make such a designation in writing if it is satisfied—

- (a) that every trade union which is a party to the dismissal procedures agreement is an independent trade union;
- (b) that the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed;
- (c) that those procedures are available without discrimination to all employees falling within any description to which the agreement applies;
- (d) that the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Order;
- (e) that the procedures provided by the agreement include a right to arbitration or adjudication by an independent referee, or by a tribunal or other independent body, in cases where (by reason of an equality of votes or for any other reason) a decision cannot otherwise be reached; and
- (f) that the provisions of the agreement are such that it can be determined with reasonable certainty whether a particular employee is one to whom the agreement applies or not.

(3) Where a dismissal procedures agreement is for the time being designated under this Article, the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under Article 20; and accordingly that Article shall not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.

Revocation of exclusion under Article 26

27.—(1) At any time when a designation under Article 26 is in force, any of the parties to the dismissal procedures agreement to which the designation relates may apply to the Department for the designation to be revoked.

(2) If on any such application the Department is satisfied either—

- (a) that it is the desire of all the parties to the dismissal procedures agreement that the designation should be revoked, or

(b) that the agreement has ceased to fulfill all the conditions specified in Article 26 (2),
the Department shall in writing revoke the designation.

(3) Where the Department revokes a designation under this Article it may give such written directions of a transitional nature as appear to the Department to be appropriate in the circumstances and, in particular, may direct—

- (a) that, notwithstanding Article 26 (3), an employee shall not be excluded from his rights under Article 20 where the effective date of termination falls within a transitional period which is specified by the Department and is a period ending with the date on which the revocation under this Article takes effect and shall have an extended time for presenting a complaint under Article 29 in respect of a dismissal where the effective date of termination falls within that period, and
- (b) that in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, where the effective date of termination falls within that transitional period, an industrial tribunal shall have regard to such considerations (in addition to those specified in this Order) as the Department may specify.

Pressure on employer to dismiss unfairly

28. In determining, for the purposes of this Part any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of Article 22 (1) (b) or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him,—

- (a) no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and
- (b) any such question shall be determined as if no such pressure had been exercised.

Complaint to industrial tribunal of unfair dismissal

29.—(1) A complaint may be presented to an industrial tribunal against an employer by any employee that he was unfairly dismissed by the employer.

(2) Where a complaint of unfair dismissal is presented to an industrial tribunal under paragraph (1) and it appears to the tribunal that the dismissal is one in respect of which (as being unlawful discrimination)—

- (a) a complaint could be made under any Act of Parliament passed in the Session in which this Order is made relating to unlawful discrimination in relation to employments and occupations in Northern Ireland on the ground of religious belief or political opinion; or
- (b) such a complaint has been made, but the proceedings under that Act have not been disposed of,

the tribunal shall not proceed any further under this Order in relation to the dismissal unless all proceedings which can be taken under that Act in respect of the dismissal have been disposed of.

National security

30.—(1) If on a complaint under Article 29 it is shown that the action to which the complaint relates was taken for the purpose of safeguarding national security or protecting public safety or public order, the industrial tribunal shall dismiss the complaint.

(2) A certificate purporting to be signed by or on behalf of the Secretary of State, and certifying—

- (a) that action specified in the certificate was taken for the purpose of safeguarding national security or protecting public safety or public order, or
- (b) that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security, public safety or public order,

shall for the purposes of this Order be conclusive evidence of the fact so certified.

Remedies for unfair dismissal

Order for reinstatement or re-engagement

31.—(1) Where on a complaint under Article 29 an industrial tribunal finds that the grounds of the complaint are well-founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under this Article and in what circumstances they may be made, and shall ask him whether he wishes the tribunal to make such an order, and if he does express such a wish the tribunal may make an order under this Article.

(2) An order under this Article may be an order for reinstatement (in accordance with paragraphs (3) and (4)) or an order for re-engagement (in accordance with paragraph (5)), as the tribunal may decide, and in the latter case may be on such terms as the tribunal may decide.

(3) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order the tribunal shall specify—

- (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of reinstatement;
- (b) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
- (c) the date by which the order must be complied with.

(4) Without prejudice to the generality of paragraph (3), if the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(5) An order for re-engagement is an order that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment, and on making such an order the tribunal shall specify the terms on which re-engagement is to take place including—

- (a) the identity of the employer;
- (b) the nature of the employment;
- (c) the remuneration for the employment;
- (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of re-engagement;

- (e) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
- (f) the date by which the order must be complied with.

(6) In exercising its discretion under this Article the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations, that is to say—

- (a) whether the complainant wishes to be reinstated;
- (b) whether it is practicable for the employer to comply with an order for reinstatement;
- (c) where the complainant caused or contributed to come extent to the dismissal, whether it would be just to order his reinstatement.

(7) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and if so on what terms; and in so doing the tribunal shall take into account the following considerations, that is to say—

- (a) any wish expressed by the complainant as to the nature of the order to be made;
- (b) whether it is practicable for the employer or, as the case may be, a successor or associated employer to comply with an order for re-engagement;
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and if so on what terms;

and except in a case where the tribunal takes into account contributory fault under sub-paragraph (c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(8) Where in any case an employer has engaged a permanent replacement for a dismissed employee the tribunal shall not take that fact into account in determining, for the purposes of paragraph (6) (b) or (7) (b) whether it is practicable to comply with an order for reinstatement or re-engagement unless the employer shows—

- (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement; or
- (b) that he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and that when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

(9) In calculating for the purpose of paragraph (3) (a) or (5) (d) any amount payable by the employer the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement or re-engagement by way of—

- (a) wages in lieu of notice or ex-gratia payments paid by the employer;
 - (b) remuneration paid in respect of employment with another employer;
- and such other benefits as the tribunal thinks appropriate in the circumstances.

Enforcement of Article 31 order and compensation

32.—(1) If an order under Article 31 is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to Article 37, an industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, of such amount as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

(2) Subject to paragraph (1), if an order under Article 31 is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order—

(a) the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with Articles 33 to 36, to be paid by the employer to the employee; and

(b) unless the employer satisfies the tribunal that it was not practicable to comply with the order, the tribunal shall make an additional award of compensation to be paid by the employer to the employee of an amount—

(i) where the dismissal is of a description referred to in paragraph (3), not less than 26 or more than 52 weeks' pay, or

(ii) in any other case, not less than 13 or more than 26 weeks' pay.

(3) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with paragraph (2) (b) (i) are the following, that is to say,—

(a) a dismissal which is unfair by virtue of Article 22 (4) or (6);

(b) a dismissal which is an act of discrimination (within the meaning of the Sex Discrimination (Northern Ireland) Order 1976 (a)) which is unlawful by virtue of that Order.

(4) Where in any case an employer has engaged a permanent replacement for a dismissed employee the tribunal shall not take that fact into account in determining, for the purposes of paragraph (2) (b) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(5) If on a complaint under Article 29 the tribunal finds that the grounds of the complaint are well-founded, and no order is made under Article 31 the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with Articles 33 to 36, to be paid by the employer to the employee.

(6) Where in any case the tribunal makes an award of compensation for unfair dismissal, calculated in accordance with Articles 33 to 36, and the tribunal finds that the complainant has unreasonably prevented an order under Article 31 from being complied with, it shall, without prejudice to the generality of Article 36 (4), take that conduct into account as a failure on the part of the complainant to mitigate his loss.

(7) For the purposes of Part II of Schedule 2 as it applies for the calculation of a week's pay for the purpose of paragraph (2) (b), the calculation date where the dismissal was with notice is the date on which the notice was given and in any other case the effective date of termination.

(8) Notwithstanding anything in the said Part II, the amount of a week's pay for the purpose of calculating an additional award under paragraph (2) (b) shall not exceed £80.

(a) S.I. 1976/1042 (N.I. 15.).

Compensation for unfair dismissal

33. Where a tribunal makes an award of compensation for unfair dismissal under Article 32 (2) (a) or (5) the award shall consist of a basic award (calculated in accordance with Articles 34 and 35) and a compensatory award (calculated in accordance with Article 36).

Calculation of basic award

34.—(1) The amount of the basic award shall be the amount calculated in accordance with paragraphs (3) to (7) and Article 35 (1) to (5), subject to the following provisions of this Order namely—

- (a) paragraph (2) (which provides for an award of two weeks' pay in certain cases);
- (b) Article 35 (6) (which provides for the amount of the award to be reduced where the employee contributed to the dismissal);
- (c) Article 35 (7) (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and
- (d) Article 38 (which prohibits double compensation where compensation in respect of the same matter is also awarded under certain other statutory provisions).

(2) In the following cases the amount of the basic award shall be two weeks' pay:—

- (a) where the tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—
 - (i) by virtue of section 12 (5) or (6) of the Act of 1965 (unreasonable refusal or relinquishment of suitable alternative employment) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
 - (ii) by virtue of the operation of section 13 (3) of that Act (renewal of employment or re-engagement) is not treated as dismissed for the purposes of Part II of that Act;
- (b) where the amount calculated in accordance with paragraphs (3) to (7) and Article 35 (1) to (6) is less than the amount of two weeks' pay.

(3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the numbers of years of employment falling within that period, and allowing—

- (a) one and a half weeks' pay for each such year of employment which consists wholly of weeks in which the employee was not below the age of 41;
- (b) one week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of 41 and was not below the age of 22; and
- (c) half a week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of 22 and was not below the age of 18.

(4) In ascertaining for the purpose of paragraph (3) the period for which an employee has been continuously employed, where the effective date of termination falls to be determined in accordance with Article 21 (5) a period falling within such an interval as is referred to in Article 68 (2) shall count as a period of employment notwithstanding that it does not count under Schedule 1 to the Act of 1965 (computation of period of employment).

(5) Where in reckoning the number of years of employment in accordance with paragraph (3) 20 years of employment have been reckoned no account shall be taken of any year of employment earlier than those 20 years.

(6) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with paragraphs (3) to (5) shall be reduced by the appropriate fraction.

(7) In paragraph (6) "the specified anniversary" in relation to a man means the 64th anniversary of the day of his birth, and in relation to a woman means the 59th anniversary of the day of her birth, and "the appropriate fraction" means the fraction of which—

(a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and

(b) the denominator is 12.

Provisions supplementary to Article 34

35.—(1) For the purposes of Part II of Schedule 2 as it applies for the calculation of a week's pay for the purposes of Article 34 the calculation date is, subject to paragraph (3), the date on which notice would have been given by the employer had the conditions referred to in paragraph (2) been fulfilled (whether those conditions were in fact fulfilled or not).

(2) Those conditions are that the contract was terminable by notice and was terminated by the employer giving such notice as is required to terminate that contract by section 1 (1) of the Act of 1965 (minimum period of notice), and that the notice expired on the effective date of termination.

(3) Where by virtue of Article 21 (5) a date is to be treated as the effective date of termination for the purposes of Article 34 (3) which is later than the effective date of termination as defined by Article 21 (4) then, for the purposes of Part II of Schedule 2 as it applies for the calculation of a week's pay for the purposes of Article 34, the calculation date is the effective date of termination as defined by the said Article 21 (4).

(4) Notwithstanding anything in the said Part II, the amount of a week's pay for the purpose of calculating a basic award shall not exceed £80.

(5) Without prejudice to the generality of the power to make transitional provision in an order under Article 70, such an order may provide that it shall apply in the case of a dismissal in relation to which the effective date of termination for the purposes of this paragraph (as defined by Article 21 (5)) falls after the order comes into operation, notwithstanding that the effective date of termination for the purposes of other provisions of this Order (as defined by Article 21 (4)) falls before the order comes into operation.

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

(7) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the tribunal under the Act of 1965 in respect of the same dismissal or 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 the Act of 1965 or otherwise.

Calculation of compensatory award

36.—(1) Subject to Articles 37 and 38, 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 said loss shall be taken to include—

- (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 said loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy, whether in pursuance of the Act of 1965 or otherwise, shall include 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 35 (6) or (7)) in respect of the same dismissal.

(4) In ascertaining the said loss 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 calling, organising, procuring or financing a strike or other industrial action, or 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.

(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 the Act of 1965 or otherwise, exceeds the amount of the basic award which would be payable but for Article 35 (7) that excess shall go to reduce the amount of the compensatory award.

Limit on compensation

37.—(1) The amount of compensation awarded to a person under Article 32 (1) or of a compensatory award to a person calculated in accordance with Article 36 shall not exceed £5,200.

(2) The Department may by order increase the said limit of £5,200 or that limit as from time to time increased under this paragraph.

(3) It is hereby declared for the avoidance of doubt that the limit imposed by this Article applies to the amount which the industrial tribunal would, apart from this Article, otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and any reduction in the amount of the award required by any statutory provision or rule of law.

Double compensation

38.—(1) Where compensation falls to be awarded in respect of any act both under the Sex Discrimination (Northern Ireland) Order 1976 and under the provisions of this Order relating to unfair dismissal, an industrial tribunal shall not award compensation under that Order or this Order in respect of any loss or other matter which is or has been taken into account under the other Order 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 any such Act of Parliament as is referred to in Article 29 (2) (a) 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 that Act by the court in awarding compensation in an action in respect of that act.

(3) Without prejudice to Article 37 or Article 65 (2) of the Sex Discrimination (Northern Ireland) Order 1976, in a case to which paragraph (1) applies the aggregate of the following amounts of compensation awarded by an industrial tribunal, that is to say—

- (a) any compensation awarded under the Sex Discrimination (Northern Ireland) Order 1976; and
- (b) any compensation awarded under Article 32 (1) or, as the case may be, which is calculated in accordance with Article 36,

shall not exceed the limit for the time being imposed by Article 37.

Interim relief pending determination of complaint

39.—(1) An employee who presents a complaint to an industrial tribunal that he has been unfairly dismissed by his employer and that the reason for the dismissal (or, if more than one, the principal reason) was that the employee—

- (a) was, or proposed to become, a member of a particular independent trade union, or
- (b) had taken, or proposed to take, part at any appropriate time in the activities of a particular independent trade union of which he was or proposed to become a member;

may, subject to the following provisions of this Article, apply to the tribunal for an order under the following provisions of this Article.

(2) An industrial tribunal shall not entertain an application under this Article unless—

- (a) it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date); and
- (b) before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or had proposed to become a member

stating that on the date of the dismissal the employee was or had proposed to become a member of the union and that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(3) An industrial tribunal shall determine an application under this Article as soon as practicable after receiving the application and the relevant certificate, but shall, at least seven days before the date of the hearing, give the employer a copy of the application and certificate, together with notice of the date, time and place of the hearing.

(4) An industrial tribunal shall not exercise any power it has of postponing the hearing in the case of an application under this Article except where the tribunal is satisfied that special circumstances exist which justify it in doing so.

(5) If on hearing an application under this Article it appears to an industrial tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the complainant was unfairly dismissed and that the reason for the dismissal or (if more than one, the principal reason) was a reason mentioned in paragraph (1), the tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on an application under this Article and in what circumstances it may exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—

- (a) to reinstate the employee, that is to say, to treat the employee in all respects as if he had not been dismissed; or
- (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(6) In paragraph (5) “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal shall be regarded as continuous with his employment following the dismissal.

(7) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

(8) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions, and—

- (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect; and
- (b) if the employee is unwilling to accept the job on those terms and conditions, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order under this Article.

(9) If on the hearing of an application under this Article the employer fails to attend before the tribunal or he states that he is unwilling either to reinstate the employee or re-engage him as mentioned in paragraph (5) the tribunal shall make an order for the continuation of the employee’s contract of employment.

(10) In this Article—

“appropriate time” has the meaning assigned to it by Article 22 (5);

“authorised official”, in relation to a trade union, means an official of the union authorised by the union to act for the purposes of this Article; and any reference to the date of dismissal is a reference—

(a) where the employee’s contract of employment was terminated by notice (whether given by his employer or by him), to the date on which the employer’s notice was given; and

(b) in any other case, to the effective date of termination.

(11) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this Article and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved, and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

Orders for continuation of contract of employment

40.—(1) An order for the continuation of a contract of employment under Article 39 shall be an order that the contract of employment, if it has been terminated, shall continue in force as if it had not been terminated and if not shall on its termination continue in force, in either case until the determination or settlement of the complaint and only for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters and for the purpose of determining for any purpose the period for which the employee has been continuously employed.

(2) Where the tribunal makes any such order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period or part of any such period falling between the date of the dismissal and the determination or settlement of the complaint and, subject to paragraph (5), the amount so specified shall be that which the employee could reasonably have been expected to earn during that period or part, and shall be paid, in the case of a payment for any such period falling wholly or partly after the order, on the normal pay day for that period and, in the case of a payment for any past period, within a time so specified.

(3) If an amount is payable by way of pay in pursuance of any such order in respect only of part of a normal pay period the amount shall be calculated by reference to the whole period and be reduced proportionately.

(4) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of any normal pay period or part of any such period shall go towards discharging the employer’s liability in respect of that period under paragraph (2) and conversely any payment under paragraph (2) in respect of any period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

(5) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.

(6) For the purposes of this Article the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

Supplementary provisions as to interim relief

41.—(1) At any time between the making of an order by an industrial tribunal under Article 39 and the determination or settlement of the complaint to which it relates, the employer or the employee may apply to the tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order, and that Article shall apply to the application as it applies to an application for an order under that Article except that—

- (a) no certificate need be presented to the tribunal under paragraph (2) (b), and no copy of the certificate need be given to the employer under paragraph (3) of that Article; and
- (b) in the case of an application by an employer, for the reference in the said paragraph (3) to the employer there shall be substituted a reference to the employee.

(2) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under Article 39 (7) or (8)—

- (a) the tribunal shall make an order for the continuation of the employee's contract of employment and Article 40 shall apply to an order under this paragraph as it applies to an order for the continuation of a contract of employment under Article 39; and
- (b) the tribunal shall also order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order under Article 39 (7) or (8) and to any loss suffered by the employee in consequence of the non-compliance.

(3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, then—

- (a) if the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount of pay owed by the employer to the employee on the date of the determination, and, if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed by his employer, the tribunal shall specify that amount separately from any other sum awarded to the employee; and
- (b) in any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

(4) An industrial tribunal hearing an application under Article 39 or this Article may consist of the President of Industrial Tribunals, the chairman of the tribunal or a member of a panel of chairmen of such tribunals for the time being nominated by the President to hear such applications.

Insolvency

Employee's rights on insolvency of employer

42.—(1) If on an application made to it in writing by an employee the Department is satisfied—

- (a) that the employer of that employee has become insolvent; and

(b) that on the relevant date the employee was entitled to be paid the whole or part of any debt to which this Article applies, the Department shall, subject to the provisions of this Article, pay the employee out of the Northern Ireland Redundancy Fund the amount to which in the opinion of the Department the employee is entitled in respect of that debt.

(2) In this Article the "relevant date" in relation to a debt means the date on which the employer became insolvent or the date of the termination of the employee's employment, whichever is the later.

(3) This Article applies to the following debts:—

(a) any arrears of pay in respect of a period or periods not exceeding in the aggregate eight weeks;

(b) any amount which the employer is liable to pay the employee for the period of notice required by section 1 (1) or (2) of the Act of 1965 (minimum period of notice) or for any failure of the employer to give the period of notice required by section 1 (1) of that Act;

(c) any holiday pay in respect of a period or periods of holiday, not exceeding six weeks in all, to which the employee became entitled during the 12 months immediately preceding the relevant date;

(d) any basic award of compensation for unfair dismissal;

(e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice or articed clerk.

(4) For the purposes of paragraph (3) (a) any such amount as is referred to in Article 56 (5) shall be treated as if it were arrears of pay.

(5) The total amount payable to an employee in respect of any debt mentioned in paragraph (3), where the amount of that debt is referable to a period of time, shall not exceed £80 in respect of any one week or, in respect of a shorter period, an amount bearing the same proportion to £80 as that shorter period bears to a week.

(6) A sum shall be taken to be reasonable for the purposes of paragraph (3) (e) if it is admitted to be reasonable by the court under section 250 of the Irish Bankrupt and Insolvent Act 1857 (a) (preferential claims of apprentices) or, in the case where a liquidator has been or is required to be appointed, if it is admitted to be reasonable by the liquidator under that section as applied to the winding up of a company by section 286 of the Companies Act (Northern Ireland) 1960 (b).

(7) The provisions of paragraphs (8) and (9) shall apply in a case where one of the following officers (hereafter in this Article referred to as the "relevant officer") is acting or has been or is required to be appointed in connection with the employer's insolvency, that is to say, the Official Assignee, a liquidator, a receiver or manager, or a trustee under a composition or arrangement between the employer and his creditors or under a trust deed for his creditors executed by the employer.

(8) Subject to paragraph (9), the Department shall not in such a case make any payment under this Article in respect of any debt until it has received a statement from the relevant officer of the amount of that debt which appears

(a) 1857 c. 60. (b) 1960 c. 22 (N.I.).

to have been owed to the employee on the relevant date and to remain unpaid; and the relevant officer shall, on request by the Department, provide it, as soon as reasonably practicable, with such a statement.

(9) Where—

(a) a period of six months has elapsed since the application for a payment under this Article was received by the Department, but no such payment has been made;

(b) the Department is satisfied that a payment under this Article should be made; and

(c) it appears to the Department that there is likely to be further delay before it receives a statement about the debt in question,

then, the Department may, if the applicant so requests or, if the Department thinks fit, without such a request, make a payment under this Article notwithstanding that no such statement has been received.

Payment of unpaid contributions to occupational pension scheme

43.—(1) If, on an application made to it in writing by the persons competent to act in respect of an occupational pension scheme, the Department is satisfied that an employer has become insolvent and that at the time that he did so there remained unpaid relevant contributions falling to be paid by him to the scheme, the Department shall, subject to the provisions of this Article, pay into the resources of the scheme out of the Northern Ireland Redundancy Fund the sum which in its opinion is payable in respect of the unpaid relevant contributions.

(2) In this Article “relevant contributions” means contributions falling to be paid by an employer in accordance with an occupational pension scheme, either on his own account or on behalf of an employee; and for the purposes of this Article a contribution of any amount shall not be treated as falling to be paid on behalf of an employee unless a sum equal to that amount has been deducted from the pay of the employee by way of a contribution from him.

(3) The sum payable under this Article in respect of unpaid contributions of an employer on his own account to an occupational pension scheme shall be the least of the following amounts—

(a) the balance of relevant contributions remaining unpaid on the date when he became insolvent and payable by the employer on his own account to the scheme in respect of the 12 months immediately preceding that date;

(b) the amount certified by an actuary to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme to or in respect of the employees of the employer;

(c) an amount equal to 10 per cent. of the total amount of remuneration paid or payable to those employees in respect of the 12 months immediately preceding the date on which the employer became insolvent.

(4) For the purposes of paragraph (3) (c) “remuneration” includes holiday pay and any such amount as is referred to in Article 56 (5).

(5) Any sum payable under this Article in respect of unpaid contributions on behalf of an employee shall not exceed the amount deducted from the pay of the employee in respect of the employee’s contributions to the occupational pension scheme during the 12 months immediately preceding the date on which the employer became insolvent.

(6) The provisions of paragraphs (7) to (9) shall apply in a case where one of the following officers (hereafter in this Article referred to as the “relevant officer”) is acting or has been or is required to be appointed in connection with the employer’s insolvency, that is to say, the Official Assignee, a liquidator, a receiver or manager, or a trustee under a composition or arrangement between the employer and his creditors or under a trust deed for his creditors executed by the employer.

(7) Subject to paragraph (9), the Department shall not in such a case make any payment under this Article in respect of unpaid relevant contributions until it has received a statement from the relevant officer of the amount of relevant contributions which appear to have been unpaid on the date on which the employer became insolvent and to remain unpaid; and the relevant officer shall, on request by the Department provide it, as soon as reasonably practicable, with such a statement.

(8) Subject to paragraph (9), an amount shall be taken to be payable, paid or deducted as mentioned in paragraph (3) (a) or (c) or paragraph (5) only if it is so certified by the relevant officer.

(9) Where—

(a) a period of six months has elapsed since the application for a payment under this Article was received by the Department but no such payment has been made;

(b) the Department is satisfied that a payment under this Article should be made; and

(c) it appears to the Department that there is likely to be further delay before it receives a statement or certificate about the contributions in question,

then, the Department may, if the applicants so request or, if the Department thinks fit, without such a request, make a payment under this Article, notwithstanding that no such statement or certificate has been received.

Complaint to industrial tribunal

44.—(1) A person who has applied for a payment under Article 42 may, within the period of three months beginning with the date on which the decision of the Department on that application was communicated to him or, if that is not reasonably practicable, within such further period as is reasonable, present a complaint to an industrial tribunal that—

(a) the Department has failed to make any such payment; or

(b) any such payment made by the Department is less than the amount which should have been paid.

(2) Any persons who are competent to act in respect of an occupational pension scheme and who have applied for a payment to be made under Article 43 into the resources of the scheme may, within the period of three months beginning with the date on which the decision of the Department on that application was communicated to them, or, if that is not reasonably practicable, within such further period as is reasonable, present a complaint to an industrial tribunal that—

(a) the Department has failed to make any such payment; or

(b) any such payment made by it is less than the amount which should have been paid.

(3) Where an industrial tribunal finds that the Department ought to make a payment under Article 42 or 43, it shall make a declaration to that effect and shall also declare the amount of any such payment which it finds the Department ought to make.

Transfer to Department of rights and remedies

45.—(1) Where in pursuance of Article 42 the Department makes any payment to an employee in respect of any debt to which that Article applies—

- (a) any rights and remedies of the employee in respect of that debt (or, if the Department has paid only part of it, in respect of that part) shall, on the making of the payment, become rights and remedies of the Department; and
- (b) any decision of an industrial tribunal requiring an employer to pay that debt to the employee shall have the effect that the debt or, as the case may be, that part of it which the Department has paid, is to be paid to the Department.

(2) There shall be included among the rights and remedies which become rights and remedies of the Department in accordance with paragraph (1) (a) any right to be paid in priority to other creditors of the employer in accordance with—

- (a) section 1 of the Preferential Payments (Bankruptcies and Arrangements) Act (Northern Ireland) 1964 (a); and
- (b) section 287 of the Companies Act (Northern Ireland) 1960,

and the Department shall be entitled to be so paid in priority to any other unsatisfied claim of the employee; and in computing for the purposes of any of those provisions any limit on the amount of sums to be so paid any sums paid to the Department shall be treated as if they had been paid to the employee.

(3) Where in pursuance of Article 43 the Department makes any payment into the resources of an occupational pension scheme in respect of any contributions to the scheme, any rights and remedies in respect of those contributions belonging to the persons competent to act in respect of the scheme shall, on the making of the payment, become rights and remedies of the Department.

(4) Any sum recovered by the Department in exercising any right or pursuing any remedy which is its by virtue of this Article shall be paid into the Northern Ireland Redundancy Fund.

Power of Department to obtain information in connection with applications

46.—(1) Where an application is made to the Department under Article 42 or 43 in respect of a debt owed, or contributions to an occupational pension scheme falling to be made, by an employer, the Department may require—

- (a) the employer to provide it with such information as the Department may reasonably require for the purpose of determining whether the application is well-founded; and
- (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Department any such document in that person's custody or under his control which is of such a description as the Department may require.

(a) 1964 c. 32 (N.I.).

(2) Any such requirement shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.

(3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this Article he shall be liable on summary conviction to a fine not exceeding £100.

(4) If a person, in purporting to comply with a requirement of a notice under this Article, knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.

Interpretation of Articles 42 to 46

47.—(1) For the purposes of Articles 42 to 46 an employer shall be taken to be insolvent if, but only if, in Northern Ireland,—

- (a) he becomes bankrupt or makes a composition or arrangement with his creditors;
- (b) he has died and an order is made under section 21 of the Bankruptcy Amendment Act (Northern Ireland) 1929 (a) for the administration of his estate according to the law of bankruptcy, or by virtue of an order of the court his estate is being administered in accordance with rules set out in Part I of Schedule 1 to the Administration of Estates Act (Northern Ireland) 1955 (b); or
- (c) where the employer is a company, a winding up order is made or a resolution for voluntary winding up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

(2) In Articles 42 to 46—

“holiday pay” means—

- (a) pay in respect of a holiday actually taken; or
- (b) any accrued holiday pay which under the employee’s contract of employment would in the ordinary course have become payable to him in respect of the period of a holiday if his employment with the employer had continued until he became entitled to a holiday;

“occupational pension scheme” means any scheme or arrangement which provides or is capable of providing, in relation to employees in any description of employment, benefits (in the form of pensions or otherwise) payable to or in respect of any such employees on the termination of their employment or on their death or retirement;

and any reference in those Articles to the resources of such a scheme is a reference to the funds out of which the benefits provided by the scheme are from time to time payable.

Written statement of reasons for dismissal

Written statement of reasons for dismissal

48.—(1) An employee shall be entitled—

- (a) if he is given by his employer notice of termination of his contract of employment;

(a) 1929 c. 1 (N.I.). (b) 1955 c. 24 (N.I.).

(b) if his contract of employment is terminated by his employer without notice; or
(c) if, where he is employed under a contract for a fixed term, that term expires without being renewed under the same contract,
to be provided by his employer, on request, within 14 days of that request, with a written statement giving particulars of the reasons for his dismissal.

(2) An employee shall not be entitled to a written statement under paragraph (1) unless on the effective date of termination he has been, or will have been, continuously employed for a period of 26 weeks ending with the last complete week before that date.

(3) A written statement provided under this Article shall be admissible in evidence in any proceedings.

(4) A complaint may be presented to an industrial tribunal by an employee against his employer on the ground that the employer unreasonably refused to provide a written statement under paragraph (1) or that the particulars of reasons given in purported compliance with that paragraph are inadequate or untrue, and if the tribunal finds the complaint well-founded—

(a) it may make a declaration as to what it finds the employer's reasons were for dismissing the employee; and

(b) it shall make an award that the employer pay to the employee a sum equal to the amount of two weeks' pay.

(5) An industrial tribunal shall not entertain a complaint under this Article relating to the reasons for a dismissal unless it is presented to the tribunal at such a time that the tribunal would, in accordance with Article 59 (5) or (6), entertain a complaint of unfair dismissal in respect of that dismissal presented at the same time.

(6) For the purposes of Part II of Schedule 2 as it applies for the calculation of a week's pay for the purposes of this Article, the calculation date where the dismissal was with notice is the date on which the employer's notice was given and in any other case is the effective date of termination.

PART IV

PROCEDURE FOR HANDLING REDUNDANCIES

Duty of employer to consult trade union representatives on redundancy

49.—(1) An employer proposing to dismiss as redundant an employee of a description in respect of which an independent trade union is recognised by him shall consult representatives of that trade union about the dismissal in accordance with the following provisions of this Article.

(2) In this Article and Article 50, "trade union representative" in relation to a trade union means an official or other person authorised to carry on collective bargaining with the employer in question by that trade union.

(3) The consultation required by this Article shall begin at the earliest opportunity, and shall in any event begin—

(a) where the employer is proposing to dismiss as redundant 100 or more employees at one establishment within a period of 90 days or less, at least 90 days before the first of those dismissals takes effect; or

(b) where the employer is proposing to dismiss as redundant 10 or more employees at one establishment within a period of 30 days or less, at least 60 days before the first of those dismissals takes effect.

(4) In determining for the purpose of paragraph (3) whether an employer is proposing to dismiss as redundant 100 or more, or, as the case may be, 10 or more, employees within the periods mentioned in that paragraph, no account shall be taken of employees whom he proposes to dismiss as redundant in respect of whose proposed dismissals consultation has already begun.

(5) For the purposes of the consultation required by this Article the employer shall disclose in writing to trade union representatives—

- (a) the reasons for his proposals;
- (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant;
- (c) the total number of employees of any such description employed by the employer at the establishment in question;
- (d) the proposed method of selecting the employees who may be dismissed; and
- (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect.

(6) The information which is to be given to trade union representatives under this Article shall be delivered to them, or sent by post to an address notified by them to the employer, or sent by post to the union at the address of its head or main office.

(7) In the course of the consultation required by this Article the employer shall—

- (a) consider any representations made by the trade union representatives; and
- (b) reply to those representations and, if he rejects any of those representations, state his reasons.

(8) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with any of the requirements of paragraphs (3), (5) or (7), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

(9) This Article shall not be construed as conferring any rights on a trade union or an employee except as provided by Articles 51 to 53.

Duty of employer to notify Department of certain redundancies

50.—(1) An employer proposing to dismiss as redundant—

- (a) 100 or more employees at one establishment within a period of 90 days or less; or
- (b) 10 or more employees at one establishment within a period of 30 days or less,

shall notify the Department, in writing, of his proposal—

- (i) in a case falling within sub-paragraph (a), at least 90 days before the first of those dismissals takes effect; and

(ii) in a case falling within sub-paragraph (b), at least 60 days before the first of those dismissals takes effect,

and where the notice relates to employees of any description in respect of which an independent trade union is recognised by him, he shall give a copy of the notice to representatives of that union.

(2) In determining for the purpose of paragraph (1) whether an employer is proposing to dismiss as redundant 100 or more, or, as the case may be, 10 or more, employees within the periods mentioned in that paragraph, no account shall be taken of employees whom he proposes to dismiss as redundant in respect of whose proposed dismissals notice has already been given to the Department.

(3) A notice under this Article shall—

(a) be given to the Department by delivery to the Department or by sending it by post to the Department;

(b) in a case where consultation with trade union representatives is required by Article 49 identify the trade union concerned and state the date when consultation began; and

(c) be in such form and contain such particulars, in addition to those required by sub-paragraph (b), as the Department may direct.

(4) The copy of the notice under this Article which is to be given to trade union representatives shall be delivered to them, or sent by post to an address notified by them to the employer, or sent by post to the union at the address of its head or main office.

(5) At any time after receiving a notice under this Article from an employer the Department may by written notice require the employer to give it such further information as may be specified in the requirement.

(6) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of paragraphs (1) to (5), he shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

Complaint by trade union and protective award

51.—(1) An appropriate trade union may present a complaint to an industrial tribunal on the ground that an employer has dismissed as redundant or is proposing to dismiss as redundant one or more employees and has not complied with any of the requirements of Article 49.

(2) If on a complaint under this Article a question arises as to the matters referred to in Article 49 (8), it shall be for the employer to show—

(a) that there were special circumstances which rendered it not reasonably practicable for him to comply with any requirement of Article 49; and

(b) that he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances.

(3) Where the tribunal finds a complaint under paragraph (1) well-founded it shall make a declaration to that effect and may also make a protective award in accordance with paragraph (4).

(4) A protective award is an award that in respect of such descriptions of employees as may be specified in the award, being employees who have been dismissed, or whom it is proposed to dismiss, as redundant, and in respect of whose dismissal or proposed dismissal the employer has failed to comply with any requirement of Article 49, the employer shall pay remuneration for a protected period.

(5) The protected period under an award under paragraph (4) shall be a period beginning with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, of such length as the tribunal shall determine to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of Article 49, not exceeding—

- (a) in a case falling within Article 49 (3) (a), 90 days;
- (b) in a case falling within Article 49 (3) (b), 60 days; or
- (c) in any other case, 28 days.

(6) An industrial tribunal shall not consider a complaint under paragraph (1) in respect of an employer's default in relation to a dismissal or proposed dismissal unless it is presented to the tribunal before the proposed dismissal takes effect or before the end of the period of three months beginning with the date on which the dismissal takes effect or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(7) "Appropriate trade union", in relation to an employee of any description, means an independent trade union recognised by his employer in respect of that description of employee.

Entitlement under protective award

52.—(1) Where an industrial tribunal has made a protective award under Article 51, every employee of a description to which the award relates shall be entitled, subject to the following provisions of this Article, to be paid remuneration by his employer for the protected period specified in the award.

(2) The rate of remuneration payable under a protective award shall be a week's pay for each week of the protected period, and if remuneration falls to be calculated for a period less than one week the amount of a week's pay shall be reduced proportionately.

(3) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a period falling within a protected period, shall go towards discharging the employer's liability to pay remuneration under the protective award in respect of that first mentioned period, and conversely any payment of remuneration under a protective award in respect of any period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

(4) In respect of a period during which he is employed by the employer an employee shall not be entitled to remuneration under a protective award unless he would be entitled to be paid by the employer in respect of that period, either by virtue of his contract of employment or by virtue of Schedule 2 to the Act of 1965 (rights of employee in period of notice), if that period fell within the period of notice required to be given by section 1 (1) of that Act.

(5) Where the employee is employed by the employer during the protected period and—

- (a) he is fairly dismissed by his employer for a reason other than redundancy;
or
- (b) he unreasonably terminates the contract of employment,

then, subject to the following provisions of this Article, he shall not be entitled

to remuneration under the protective award in respect of any period during which but for that dismissal or termination he would have been employed.

(6) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of his employment under the previous contract) to renew his contract of employment, or to re-engage him under a new contract, so that the renewal or re-engagement would take effect before or during the protected period and either—

- (a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract; or
- (b) the first mentioned provisions would differ from those corresponding provisions, but the offer constitutes an offer of suitable employment in relation to the employee;

the provisions of paragraphs (7) to (11) shall have effect.

(7) If, in a case to which paragraph (6) applies, the employee unreasonably refuses that offer, then, he shall not be entitled to any remuneration under a protective award in respect of any period during which but for that refusal he would have been employed.

(8) If an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in paragraph (6) (b), there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this Article).

(9) The trial period shall begin with the ending of the employee's employment under the previous contract and end with the expiration of the period of four weeks beginning with the date on which the employee starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with paragraph (10) for the purpose of retraining the employee for employment under that contract.

(10) Any such agreement shall—

- (a) be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract;
- (b) be in writing;
- (c) specify the date of the end of the trial period; and
- (d) specify the terms and conditions of employment which will apply in the employee's case after the end of that period.

(11) If during the trial period—

- (a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated; or
- (b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,

then, the employee shall remain entitled under the protective award unless, in a case falling within sub-paragraph (a), he acted unreasonably in terminating or giving notice to terminate the contract.

Complaint by employee to industrial tribunal

53.—(1) An employee may present a complaint to an industrial tribunal on the ground that he is an employee of a description to which a protective award relates and that his employer has failed, wholly or in part, to pay him remuneration under that award.

(2) An industrial tribunal shall not entertain a complaint under paragraph (1) unless it is presented to the tribunal before the end of the period of three months beginning with the day (or, if the complaint relates to more than one day, the last of the days) in respect of which the complaint is made of failure to pay remuneration, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(3) Where the tribunal finds a complaint under paragraph (1) well-founded it shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

Reduction of rebate on failure to notify redundancies

54.—(1) Where an employer—

(a) is under section 40 (1) of the Act of 1965 (rebates in respect of redundancy, etc., payments) entitled to any rebate in respect of a payment made to an employee dismissed by reason of redundancy; and

(b) fails to give notice to the Department in accordance with Article 50 of his proposal to dismiss that employee,

the Department may, subject to paragraph (2), reduce the amount of that rebate by such proportion (not exceeding one-tenth) as appears to the Department to be appropriate in the circumstances.

(2) No reduction of a rebate shall be made in respect of a failure to comply with Article 50 if proceedings have been instituted for an offence under Article 55 arising out of the same failure by the employer.

(3) Where the Department reduces a rebate in pursuance of this Article, the employer may appeal to an industrial tribunal within the period of three months beginning with the date on which the decision of the Department is communicated to him or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the appeal to be presented within the period of three months.

(4) Where on an appeal under this Article an industrial tribunal is satisfied that a rebate which was reduced to any extent should not have been reduced, or should have been reduced by a greater or lesser proportion, the tribunal shall determine accordingly, and the Department shall comply with the determination.

Offence and proceedings

55.—(1) If an employer fails to give notice to the Department in accordance with Article 50, he shall be liable on summary conviction to a fine not exceeding £400.

(2) Proceedings for an offence under paragraph (1) shall be instituted only by or with the consent of the Department or by an officer authorised for that purpose by special or general directions of the Department.

(3) An officer so authorised may, although not of counsel or a solicitor, prosecute or conduct before a magistrates' court any proceedings for such an offence.

(4) No proceedings for an offence under paragraph (1) shall be instituted in respect of a failure to comply with Article 50 if the Department has, by reason of the same failure by the employer, reduced to any extent, in accordance with Article 54, the amount payable to the employer of any rebate.

(5) For the purposes of paragraph (4), a certificate signed by a Secretary or Assistant Secretary of the Department stating that no such reduction of a rebate has been made shall be conclusive evidence of that fact; and a document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

Provisions supplementary to Articles 49 to 55

56.—(1) For the purposes of this Part a trade union shall be treated as recognised not only if it is recognised for the purposes of collective bargaining, but also if the Agency has made a recommendation under Article 7 (1) for recognition of that union.

(2) For the purposes of any proceedings under this Part, the dismissal or proposed dismissal of an employee shall be presumed, unless the contrary is proved, to be by reason of redundancy.

(3) For the purposes of Part II of Schedule 2 as it applies for the calculation of a week's pay for the purposes of Article 52 the calculation date is—

- (a) in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of paragraph 5 of Schedule 3 to the Act of 1965 is the calculation date for the purpose of computing the amount of a redundancy payment in relation to that dismissal (whether or not the employee concerned is entitled to any such payment); and
- (b) in any other case, the date on which the protective award was made.

(4) The Department may by order vary the provisions of Articles 49 (3) and 50 (1) and the periods referred to in Article 51 (5) (a) to (c) and may vary those provisions or periods either generally or in their application to any description of employees, but no such order shall be made which has the effect of reducing to less than 30 days the periods referred to in Articles 49 (3) and 50 (1) as the periods which must elapse before the first of the dismissals takes effect.

(5) Any amount owed by an employer to an employee in respect of remuneration under a protective award made under Article 51 shall be treated for the purposes of—

- (a) section 287 of the Companies Act (Northern Ireland) 1960; and
- (b) section 1 of the Preferential Payments (Bankruptcies and Arrangements) Act (Northern Ireland) 1964;

as if it were wages payable by the employer to the employee in respect of the period for which it is payable.

Power to adapt foregoing provisions in case of collective agreements on redundancies

57.—(1) If at any time there is in force a collective agreement which establishes—

- (a) arrangements for providing alternative employment for employees to whom the agreement relates if they are dismissed as redundant by an employer to whom it relates; or
- (b) arrangements for the handling of redundancies;

and on the application of all the parties to the agreement the Department, having regard to the provisions of the agreement, is satisfied that the arrangements are on the whole at least as favourable to those employees as the foregoing provisions of this Part, the Department may make an order under this Article adapting, modifying or excluding any of those provisions both in their application to all or any of those employees and in their application to any other employees of any such employer.

(2) The Department shall not make an order under this Article in respect of an agreement unless—

- (a) the agreement provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee to whom the agreement relates claims that any employer or other person to whom it relates has not complied with the provisions of the agreement, and that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached; or
- (b) the agreement indicates that any such employee may present a complaint to an industrial tribunal that any such employer or other person has not complied with those provisions.

(3) An order under this Article may confer on an industrial tribunal to whom a complaint is presented as mentioned in paragraph (2) (b) such powers and duties as the Department considers appropriate.

(4) An order under this Article may be varied or revoked by a subsequent order thereunder, whether in pursuance of an application made by all or any of the parties to the agreement in question or without any such application.

PART V

MISCELLANEOUS AND SUPPLEMENTARY

Jurisdiction and procedure of industrial tribunals

Extended scope of industrial tribunals

58.—(1) Tribunals established under section 13 of the Industrial Training Act (Northern Ireland) 1964 (a) shall, by the name of industrial tribunals, continue to exercise the jurisdiction conferred on them by or under that Act and any other statutory provision and shall also exercise the jurisdiction conferred on them by or under this Order.

(2) The remedy of an employee for infringement of any of the rights conferred on him by any provision of this Order shall, if provision is made for a complaint to an industrial tribunal, be by way of such complaint in accordance with the relevant provisions of this Order and with tribunal regulations made under Article 59, and not otherwise.

Tribunal procedure

59.—(1) The Department may by regulations (in this Article and Article 61 referred to as “the regulations”) make such provision as appears to it to be necessary or expedient with respect to proceedings before industrial tribunals.

(a) 1964 c. 18 (N.I.).

- (2) The regulations may in particular include provision—
- (a) for determining by which tribunal any appeal, question or complaint is to be determined;
 - (b) for treating the Department (either generally or in such circumstances as may be prescribed by the regulations) as a party to any proceedings before an industrial tribunal, where it would not otherwise be a party to them, and entitling it to appear and to be heard accordingly;
 - (c) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
 - (d) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court;
 - (e) for prescribing the procedure to be followed on any appeal, reference or complaint or other proceedings before an industrial tribunal, including provisions as to the persons entitled to appear and to be heard on behalf of parties to such proceedings, and provisions for enabling an industrial tribunal to review its decisions, and revoke or vary its order and awards, in such circumstances as may be determined in accordance with the regulations;
 - (f) for the appointment of one or more assessors for the purposes of any proceedings before an industrial tribunal, where the proceedings are brought under a statutory provision which provides for one or more assessors to be appointed;
 - (g) for the award of costs or expenses, including any allowances payable under section 13 (3) of the Industrial Training Act (Northern Ireland) 1964 other than allowances payable to members of industrial tribunals or assessors;
 - (h) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court); and
 - (i) for the registration and proof of decisions, orders and awards of industrial tribunals.
- (3) In relation to proceedings on complaints under Article 29 or any other statutory provision in relation to which there is provision for conciliation the regulations shall include provision—
- (a) for requiring a copy of any such complaint, and a copy of any notice relating to it which is lodged by or on behalf of the employer against whom the complaint is made, to be sent to the Department;
 - (b) for securing that the complainant and the employer against whom the complaint is made are notified that the conciliation services of the Department are available to them; and
 - (c) for postponing the hearing of any such complaint for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn.
- (4) In relation to proceedings under Article 29 where the employee has expressed a wish to be reinstated or re-engaged which has been communicated to the employer at least seven days before the hearing of the complaint, regulations shall include provision for requiring the employer to pay the costs or

expenses of any postponement or adjournment of the hearing caused by his failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the complainant was dismissed or of comparable or suitable employment.

(5) Subject to paragraph (6), an industrial tribunal shall not consider a complaint under Article 29 unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.

(6) An industrial tribunal shall consider a complaint under Article 29 if, where the dismissal is with notice, the complaint is presented after the notice is given notwithstanding that it is presented before the effective date of termination and in relation to such a complaint the provisions of this Order so far as it relates to unfair dismissal, shall have effect—

- (a) as if references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires;
- (b) as if references to reinstatement included references to the withdrawal of the notice by the employer;
- (c) as if references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice; and
- (d) as if references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

(7) The regulations may enable an industrial tribunal to sit in private for the purpose of hearing evidence which in the opinion of the tribunal relates to matters of such a nature that it would be against the interests of national security, public safety or public order to allow the evidence to be given in public or hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

- (a) information which he could not disclose without contravening a prohibition imposed by or under any statutory provision; or
- (b) any information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 3 (1), cause substantial injury to any undertaking of his or any undertaking in which he works.

(8) The regulations may include provision authorising or requiring an industrial tribunal, in circumstances specified in the regulations, to send notice or a copy of any document so specified relating to any proceedings before the tribunal, or of any decision, order or award of the tribunal, to any Northern Ireland department or other person or body so specified.

(9) The Arbitration Act (Northern Ireland) 1937 (a) shall not apply to any proceedings before an industrial tribunal.

(10) Where in accordance with the regulations an industrial tribunal determines in the same proceedings—

(a) a question referred to it under Part II of the Act of 1965; and

(b) a complaint presented under Article 29,

section 19 (2) (b) of that Act (whereby a dismissal is to be presumed, unless the contrary is proved, to have been by reason of redundancy) shall not have effect for the purposes of the proceedings in so far as they relate to the complaint under Article 29.

(11) Any person who without reasonable excuse fails to comply with any requirement imposed by the regulations by virtue of paragraph (2) (c) or any requirement with respect to the discovery or inspection of documents so imposed by virtue of paragraph (2) (d) shall be liable on summary conviction to a fine not exceeding £100.

Right of appearance

60. Any person may appear before an industrial tribunal in person or be represented by counsel or by a solicitor or by a representative of a trade union or an employers' association or by any other person whom he desires to represent him.

Recovery of sums awarded

61.—(1) Any sum payable in pursuance of a decision of an industrial tribunal which has been registered in accordance with the regulations shall, if a county court so orders, be enforceable as if it were payable under an order of that court.

(2) In this Article any reference to a decision of an industrial tribunal—

(a) does not include a decision which, on being reviewed, has been revoked by the tribunal, and

(b) in relation to a decision which, on being reviewed, has been varied by the tribunal shall be construed as a reference to the decision as so varied.

Conciliation

62.—(1) The provisions of paragraphs (2) to (7), shall have effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings,—

(a) arising out of a contravention, or alleged contravention, of Article 20, 48, 49 or 52; or

(b) arising out of a contravention, or alleged contravention, of a provision of any other statutory provision specified by an order under paragraph (8).

(2) Where a complaint has been presented to an industrial tribunal, and a copy of it has been sent to the Department, it shall be the duty of the Department—

(a) if it is requested to do so by the complainant and by the person against whom the complaint is presented, or

(b) if, in the absence of any such request, the Department considers that it could act under this paragraph with a reasonable prospect of success,

to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.

(3) For the purpose of promoting such a settlement, in a case arising out of a contravention, or alleged contravention of Article 20 where the complainant has ceased to be employed by the employer against whom the complaint was made,—

(a) the Department shall in particular seek to promote the reinstatement or re-engagement of the complainant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the Department to be equitable; but

(b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the Department to act under this Article, it shall seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.

(4) Paragraph (2) shall not apply in respect of any period during which, by virtue of Article 29 (2), an industrial tribunal may not proceed under this Order.

(5) Where at any time—

(a) a person claims that action has been taken in respect of which a complaint could be presented by him to an industrial tribunal, but

(b) before any complaint relating to that action has been presented by him, a request is made to the Department (whether by that person or by the person against whom the complaint could be made) to make its services available to them, the Department shall act in accordance with paragraphs (2) and (3) as if a complaint has been presented to an industrial tribunal.

(6) In proceedings under paragraphs (2), (3) or (5) the Department shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

(7) Anything communicated to the Department in connection with the performance of its functions under this Article shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to the Department.

(8) The Department may by order, subject to negative resolution—

(a) direct that further provisions of this Order be added to the list in paragraph (1) (a);

(b) specify a provision of any other statutory provision as one to which paragraph (1) (b) applies.

Restrictions on legal proceedings

Enforceability of collective agreements

63.—(1) Subject to paragraph (3), any collective agreement (whether made before or after the coming into operation of this Article) shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract unless the agreement—

(a) is in writing, and

(b) contains a provision which (however expressed) states that the parties intended that the agreement shall be a legally enforceable contract.

(2) Any such agreement which satisfies the conditions in paragraph (1) (a) and (b) shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract.

(3) If any such agreement is in writing and contains a provision which (however expressed) states that the parties intend that one or more parts of the agreement specified in that provision, but not the whole of the agreement, shall be a legally enforceable contract, then—

- (a) the specified part or parts shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract; and
- (b) the remainder of the agreement shall be conclusively presumed not to have been intended by the parties to be such a contract, but a part of an agreement which by virtue of this sub-paragraph is not a legally enforceable contract may be referred to for the purpose of interpreting a part of that agreement which is such a contract.

(4) Notwithstanding anything in paragraphs (2) and (3), any terms of a collective agreement (whether made before or after the coming into operation of this Article) which prohibit or restrict the right of workers to engage in a strike or other industrial action, or have the effect of prohibiting or restricting that right, shall not form part of any contract between any worker and the person for whom he works unless the collective agreement—

- (a) is in writing; and
- (b) contains a provision expressly stating that those terms shall or may be incorporated in such a contract; and
- (c) is reasonably accessible at his place of work to the worker to whom it applies and is available for him to consult during working hours; and
- (d) is one where each trade union which is a party to the agreement is an independent trade union;

and unless the contract with that worker expressly or impliedly incorporates those terms in the contract.

(5) Paragraph (4) shall have effect notwithstanding any provision to the contrary in any agreement (including a collective agreement or a contract with any worker).

Acts in contemplation or furtherance of trade disputes

64.—(1) An act done after the coming into operation of this Article by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on the ground only—

- (a) that it induces another person to break a contract or interferes or induces any other person to interfere with its performance; or
- (b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or to interfere with its performance.

(2) For the avoidance of doubt it is hereby declared that an act done by a person in contemplation or furtherance of a trade dispute is not actionable in tort on the ground only that it is an interference with the trade, business or employment of another person, or with the right of another person to dispose of his capital or his labour as he wills.

- (3) For the avoidance of doubt it is hereby declared that—
- (a) an act which by reason of paragraph (1) or (2) is itself not actionable;
 - (b) a breach of contract in contemplation or furtherance of a trade dispute;
- shall not be regarded as the doing of an unlawful act or as the use of unlawful means for the purpose of establishing liability in tort.
- (4) An agreement or combination by two or more persons to do or procure the doing of any act in contemplation or furtherance of a trade dispute shall not be actionable in tort if the act is one which, if done without any such agreement or combination, would not be actionable in tort.

Miscellaneous

Arrangements for securing and obtaining of employment

65.—(1) After section 5 of the Employment and Training Act (Northern Ireland) 1950 (a) there shall be inserted the following section:—

“Securing and obtaining of employment by Department.

5A.—(1) The Department may make such arrangements as it considers appropriate for the purpose of—

- (a) securing a temporary continuation of employment for persons in Northern Ireland who in the opinion of the Department would otherwise be likely to be dismissed by reason of redundancy; and
- (b) obtaining employment for any description of persons in Northern Ireland who in the opinion of the Department would, because of their special circumstances and a high or increasing level of unemployment in Northern Ireland, otherwise have or be likely to have difficulty in obtaining employment;

and any such arrangements may include arrangements for the making by the Department, with the consent of the Department of Finance, of payments by way of grant or loan to employers or other persons in order to facilitate the carrying out of the arrangements.

(2) Any reference in subsection (1) to redundancy shall be construed as a reference to the existence of one or other of the facts specified in section 11 (2) (a) and (b) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.”.

(2) Section 5A of the Employment and Training Act (Northern Ireland) 1950 (as inserted by paragraph (1)) shall cease to have effect on the expiration of the period of eighteen months beginning with the coming into operation of this Article unless continued in force by an order under paragraph (3).

(3) The Department may by order—

- (a) provide that the said section 5A shall continue in force for a period not exceeding twelve months from the expiration of the period mentioned in paragraph (2); and
- (b) from time to time extend or further extend the period for which the said section 5A is to continue in force by a further period not exceeding twelve months.

(a) 1950 c. 29 (N.I.).

(4) Any arrangements made before the expiration of any provision of the said section 5A shall continue in force after its expiration and may be enforced and otherwise implemented accordingly.

(5) No order shall be made under paragraph (3) unless a draft of the order is laid before and approved by a resolution of the Assembly.

Dispute settlement where no procedures exist

66.—(1) Where a trade dispute exists the Department, if it is satisfied that no appropriate procedures or arrangements agreed between the parties exist for the settlement of the trade dispute, may refer the dispute to a committee, appointed in accordance with paragraph (2), whose function shall be to—

- (a) inquire into the causes and circumstances of the trade dispute; and
- (b) seek the agreement of the parties to the trade dispute as to how it may be settled.

(2) The committee referred to in paragraph (1) shall consist of—

- (a) a chairman appointed by the Department; and
- (b) such equal number of representatives of each party to the trade dispute as the Department may determine.

(3) Where the committee is unable to achieve the agreement of the parties to the trade dispute as to its settlement, the chairman of the committee may refer the dispute to the Agency which may then exercise its powers under Article 6 (1) in relation to the dispute.

(4) Where a trade dispute is referred to the Agency under paragraph (3), the exercise by the Agency of its powers under Article 6 (1) in relation to that dispute shall not be subject to the conditions mentioned in Article 6 (2).

(5) Nothing in this Article shall prejudice the right of the parties to a trade dispute to establish at any time appropriate procedures or arrangements for the settlement of the trade dispute.

Charter on freedom of the press

67.—(1) The Department may by order direct that any charter for the time being in force in Great Britain by virtue of any enactment of the Parliament of the United Kingdom and containing practical guidance for employers, trade unions and editors and other journalists on matters relating to the freedom of the press shall, subject to such modifications and adaptations as may be specified in the order, have effect in Northern Ireland from such date as may be so specified.

(2) Before making an order under paragraph (1) the Department shall consult with the Press Council, and such employers of journalists (or employers' associations representing such employers), editors (or editors' organisations) and trade unions representing journalists as appear to the Department to be appropriate.

(3) The Department shall issue any charter for the time being in effect in Northern Ireland by virtue of paragraph (1).

(4) A failure on the part of any person to observe any provision of a charter which is for the time being in effect in Northern Ireland by virtue of paragraph (1) shall not of itself render him liable to any proceedings, but in any proceedings—

- (a) any such charter shall be admissible in evidence, and
- (b) any provision of such a charter which appears to the court or tribunal to be relevant to any question arising in those proceedings shall be taken into account by the court or tribunal in determining that question.

Supplementary

Period of continuous employment

68.—(1) The provisions of Schedule 1 to the Act of 1965 (computation of period of employment), and the provisions of any order for the time being in force under section 7 of that Act in so far as it modifies that Schedule, shall have effect for the purposes of this Order in determining for what period an employee has been continuously employed.

(2) Where by virtue of Article 21 (5) a date is to be treated as the effective date of termination for the purpose of Article 24 (1) (a) which is later than the effective date of termination as defined by Article 21 (4), then in determining for the purpose of Article 24 (1) (a) for what period an employee has been continuously employed, the period of the interval between those two dates shall count as a period of employment notwithstanding that it does not count under the said Schedule 1.

(3) For the purposes of any proceedings under or by virtue of this Order a person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

(4) The Department may by regulations make provision—

(a) for preserving the continuity of a person's period of employment for the purposes of Schedule 1 to the Act of 1965 or for the purposes of that Schedule as applied by or under any other statutory provision specified in the regulations, or

(b) for modifying or excluding the operation of sections 34 and 34A of the Act of 1965 (which require the continuity of a period of employment to be treated as broken for the purposes of that Act where a redundancy payment or an equivalent payment is paid to an employee and he is subsequently re-engaged) subject to the recovery of any such payment,

in cases where, in consequence of action to which paragraph (5) applies, a dismissed employee is reinstated or re-engaged by his employer or by a successor or associated employer of that employer.

(5) This paragraph applies to any action taken in relation to the dismissal of an employee which consists—

(a) of the presentation by him of a complaint under Article 29, or

(b) of his making a claim in accordance with a dismissal procedures agreement designated under Article 26, or

(c) of any action taken by the Department under Article 62 (5).

Calculation of normal working hours and a week's pay

69.—(1) Schedule 2 shall have effect for calculating for the purposes of this Order and the Act of 1965 the normal working hours and the amount of a week's pay of any employee and, in the case of the Act of 1965, shall have effect instead of the relevant provisions of Schedule 2, paragraph 5 of Schedule 3 and Schedule 4 to the Act of 1965.

(2) In consequence of paragraph (1), Schedule 2 to the Act of 1965 shall have effect (as respects the liability of an employer to an employee for the period of notice required by section 1 (1) or (2) of that Act), as set out in Schedule 3.

Variation of limits

70. The Department may by order at any time vary—

- (a) the limit referred to in Article 42 (5); and
- (b) the limits imposed by paragraph 5 (4) of Schedule 3 to the Act of 1965 and by Articles 32 (8) or 35 (4) on the amount of a week's pay for the purposes of those provisions.

Death of employee or employer

71. The provisions of Schedule 4 shall have effect in relation to the death of an employee or employer.

Recoupment of unemployment benefit and supplementary benefit

72.—(1) The Department of Health and Social Services and the Department acting jointly may by regulations make provision for all or any of the purposes mentioned in this paragraph with respect to payments to which this Article applies and which are the subject of proceedings before an industrial tribunal, that is to say—

- (a) enabling the Department of Health and Social Services to recover from an employer, by way of total or partial recoupment of unemployment benefit or supplementary benefit, a sum not exceeding the amount of the prescribed element of the monetary award;
 - (b) requiring or authorising the tribunal to order the payment of such a sum, by way of total or partial recoupment of either benefit, to the Department of Health and Social Services instead of to the employee;
 - (c) requiring the tribunal to order the payment to the employee of only the excess of the prescribed element of the monetary award over the amount of any unemployment benefit or supplementary benefit shown to the tribunal to have been paid to the employee, and enabling the Department of Health and Social Services to recover from the employer, by way of total or partial recoupment of the benefit, a sum not exceeding that amount.
- (2) Without prejudice to paragraph (1), regulations under that paragraph may—
- (a) confer powers and impose duties on industrial tribunals, on the Supplementary Benefits Commission for Northern Ireland and on insurance officers and other persons;
 - (b) confer on an employee who is aggrieved by any decision of the Commission as to the total or partial recoupment of supplementary benefit in pursuance of the regulations (including any decision as to the amount of benefit) a right to appeal against the decision to an Appeal Tribunal constituted under the Supplementary Benefits &c. Act (Northern Ireland) 1966 (a) and for that purpose apply section 19 (2) and (3) of that Act (appeals) with or without modifications;

(a) 1966 c. 28 (N.I.).

(c) provide for the proof in proceedings before industrial tribunals (whether by certificate or in any other manner) of any amount of unemployment benefit or supplementary benefit paid to an employee.

(3) It is hereby declared for the avoidance of doubt that the power to make regulations under section 114 of the Social Security (Northern Ireland) Act 1975 (a) for the determination of questions arising in connection with that Act includes power to make regulations for the determination of any question arising as to the total or partial recoupment of unemployment benefit in pursuance of regulations under paragraph (1) (including any decision as to the amount of benefit).

(4) Where in pursuance of any regulations under that paragraph a sum has been recovered by or paid to the Department of Health and Social Services by way of total or partial recoupment of unemployment benefit or supplementary benefit—

(a) section 119 (1) and (2) of the Social Security (Northern Ireland) Act 1975 (repayment of benefit revised on review) shall not apply to the unemployment benefit recouped; and

(b) the following provisions of the Supplementary Benefits &c. Act (Northern Ireland) 1966, that is to say, section 24 (recovery of cost of supplementary benefit from persons liable for maintenance) and section 26 (recovery of benefit and other sums in cases of misrepresentation and non-disclosure), shall not apply to the supplementary benefit recouped.

(5) Any amount found to have been duly recovered by or paid to the Department of Health and Social Services in pursuance of regulations under paragraph (1) by way of total or partial recoupment of unemployment benefit shall be paid into the Northern Ireland National Insurance Fund.

(6) This Article applies—

(a) to a payment of wages or compensation for loss of wages;

(b) to any payment under this Order by an employer to an employee or a payment by an employer to an employee of a nature similar to, or for a purpose corresponding to the purpose of, any payment under this Order.

(7) In this Article—

“monetary award”, in relation to an industrial tribunal, means the amount which is awarded, or ordered to be paid, to the employee by the tribunal or would be so awarded or ordered apart from any provision of regulations under this Article;

“the prescribed element”, in relation to any monetary award, means so much of that award as is attributable to such matters as may be prescribed by regulations under paragraph (1);

“supplementary benefit” means benefit under the Supplementary Benefits &c. Act (Northern Ireland) 1966; and

“unemployment benefit” means unemployment benefit under the Social Security (Northern Ireland) Act 1975.

Payments which are to be treated as earnings for social security purposes

73.—(1) Where a payment to which this Article applies is made by an employer to an employee, the payment and the period for which it is made shall,

(a) 1975 c. 15.

notwithstanding that the payment is made in respect of a period during which no contract of employment subsists, be respectively treated for the purposes of the Supplementary Benefits &c. Act (Northern Ireland) 1966 and the Social Security (Northern Ireland) Act 1975 as earnings of that employee and a period of his employment by that employer.

- (2) This Article applies to the following payments—
- (a) any amount paid in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under Article 31 or 39;
 - (b) any amount paid by way of pay in pursuance of an order for the continuation of a contract of employment under Article 39 or 41;
 - (c) any remuneration paid under a protective award under Article 51.

Parity Order

74.—(1) Where it appears to the Head of the Department that under any enactment of the Parliament of the United Kingdom a change is contemplated or has been made in the law of Great Britain relating to the Redundancy Fund or redundancy payments or any other matter dealt with by or under the Redundancy Payments Acts 1965 and 1969 (a) the Head of the Department may by order make provision for the purpose of securing that a corresponding change, with such modifications, if any, as are specified in the order, is made in the law of Northern Ireland.

(2) Section 1 (3) and (4) of the Social Services (Parity) Act (Northern Ireland) 1971 (b) shall apply to an order under this Article as it applies to an Order in Council under section 1 of that Act.

Arrangements with Great Britain

75.—(1) The Head of the Department shall be the appropriate Northern Irish authority for the purposes of section 128 of the Employment Protection Act 1975 (c) and may, with the consent of the Department of Finance, make reciprocal arrangements with the Secretary of State for co-ordinating the provisions of Parts III to V with the provisions of the corresponding Great Britain legislation so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.

(2) For the purpose of giving effect to any such arrangements relating to the provisions of Articles 42 to 46 the Head of the Department shall have power, in conjunction with the Secretary of State, to make any necessary financial adjustments between the Northern Ireland Redundancy Fund and the Redundancy Fund established under the Redundancy Payments Act 1965.

(3) The Head of the Department may make regulations for giving effect in Northern Ireland to any such arrangements and any such regulations may provide that Parts III to V shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—

- (a) for securing that acts, omissions and events having any effect for the purposes of the corresponding Great Britain legislation shall have a corresponding effect for the purposes of Parts III to V (but not so as to confer a right to double payment in respect of the same act, omission or event); and

(a) 1965 c. 62; 1969 c. 8. (b) 1971 c. 21 (N.I.). (c) 1975 c. 71.

(b) for determining, in cases where rights accrue both under Parts III to V and under the corresponding Great Britain legislation which of those rights shall be available to the person concerned.

(4) In this Article “the corresponding Great Britain legislation” means the Trade Union and Labour Relations Act 1974 (a) so far as it relates to unfair dismissal and the Employment Protection Act 1975.

Excluded classes of employment

76.—(1) Subject to the following provisions of this Article, Parts III and IV apply to every employment.

(2) Articles 20, 42, 43, 48, 49 and 50 do not apply to any of the following, that is to say—

- (a) any employment as master or as a member of the crew of a fishing vessel, where the employee is not remunerated otherwise than by a share in the profits or gross earnings of the vessel;
- (b) any employment where under his contract of employment the employee ordinarily works outside Northern Ireland.

(3) For the purposes of paragraph (2) (b) a person employed to work on board a ship registered in the United Kingdom (not being a ship registered at a port outside Northern Ireland) shall, unless—

- (a) the employment is wholly outside Northern Ireland; or
- (b) he is not ordinarily resident in Northern Ireland;

be regarded as a person who under his contract ordinarily works in Northern Ireland.

(4) Articles 20, 42, 43 and 48 do not apply to any employment where the employer is the husband or wife of the employee.

(5) Article 20 does not apply to any employment in an undertaking in which immediately before the effective date of termination there were in the aggregate (including the dismissed employee) less than four employees who had been continuously employed for a period of not less than thirteen weeks, whether they are, or had been, all employed at the same place or are, or had been, employed at different places.

(6) Paragraph (5) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was an inadmissible reason.

(7) Articles 42, 43, 49 and 50 do not apply to employment as a merchant seaman.

(8) Subject to paragraph (9), employment as a merchant seaman does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer but save as aforesaid includes employment as master or a member of the crew of any ship, as an apprentice to the sea service, and as a

(a) 1974 c. 52.

trainee undergoing training for the sea service, and employment in or about a ship in port by the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on such a ship while it is in port.

(9) For the purposes of paragraph (7) as it applies in relation to Articles 49 and 50, employment as a merchant seaman means employment as master or as a member of the crew of a sea-going ship, including an apprentice or trainee employed on any such ship and employment as a radio officer on such a ship.

(10) Articles 49 and 50 do not apply to employment under a contract for a fixed term of 12 weeks or less or to employment under a contract made in contemplation of the performance of a specific task which is not expected to last for more than 12 weeks, unless in either case the employee has been continuously employed for a period of more than 12 weeks.

(11) The Department may by order—

- (a) provide that any provision contained in this Order which is specified in the order shall not apply to persons or to employments of such classes as may be prescribed by the order;
- (b) add to, vary, revoke or exclude the operation of any of the provisions of paragraphs (1) to (10).

Exclusion of Arbitration Act (Northern Ireland) 1937

77. The Arbitration Act (Northern Ireland) 1937 shall not apply to any arbitration under this Order.

Restrictions on contracting out

78.—(1) Except as provided by paragraph (2) any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order; or
- (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Order before, an industrial tribunal or from making a report to the Agency under Article 8.

(2) Paragraph (1) shall not apply—

- (a) to any union membership agreement so far as it affects the rights of any employee under Article 20;
- (b) to any provision of an agreement relating to dismissal from employment such as is mentioned in Article 25 (b);
- (c) to any provision in a dismissal procedures agreement excluding rights under Article 20 if that provision is not to have effect unless a designation under Article 26 is for the time being in force in respect of it;
- (d) to any provision in a collective agreement excluding rights under Part IV if an order under Article 57 is for the time being in force in respect of it;
- (e) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where the Department has taken action in accordance with Article 62 (2), (3) or (5);
- (f) to any agreement such as is referred to in Article 8 (6) (b) or (c), to the extent that it varies or supersedes an award under Article 8 (5).

Application to the Crown

79.—(1) Subject to paragraphs (2) to (5), the provisions of this Order (except Articles 8 and 42 to 47 and Part IV) shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.

(2) In this Article (subject to paragraphs (4) and (5)) “Crown employment” means employment under or for the purposes of a Northern Ireland department or a department of the Government of the United Kingdom, otherwise than as a member of the naval, military or air forces of the Crown or of any women’s service administered by the Defence Council, and “Crown employee” means a person who is for the time being in Crown employment or (where it has ceased) was in Crown employment.

(3) For the purposes of the application of the provisions of this Order in relation to Crown employment in accordance with paragraph (1)—

- (a) any reference to an employee shall be construed as a reference to a Crown employee;
- (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of a person in Crown employment;
- (c) any reference to dismissal shall be construed as a reference to the termination of Crown employment;
- (d) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 48 (3) of the Act of 1965, are treated as equivalent to redundancy in relation to Crown employment;
- (e) the reference in Article 59 (7) (c) to any person’s undertaking or an undertaking in which he works shall be construed as a reference to the national interest; and
- (f) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown or Head of Department, as a reference to his functions or (as the context may require) to the department of which he is in charge, and, in relation to a government department, shall be construed as a reference to the functions of the department or (as the context may require) to the department.

(4) For the purposes of this Order associations established for the purposes of the Auxiliary Forces Act 1953 (a) shall be treated as if they were government departments and accordingly employment by any such association shall be Crown employment within the meaning of this Article.

(5) For the purposes of this Article, Crown employment does not include any employment in respect of which there is in force a certificate issued by or on behalf of the Secretary of State certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from this Article for the purpose of safeguarding national security or protecting public safety or public order; and any document purporting to be a certificate so issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.

(6) For the purposes of the application of the provisions of this Order in relation to employment by any body established under the Health and Personal

(a) 1953 c. 50.

Social Services (Northern Ireland) Order 1972 which exercises functions on behalf of the Crown—

- (a) Articles 42 to 47 (rights of employee on insolvency of employer) shall have effect as if Article 46 (3) and (4) were omitted; and
- (b) Part IV (procedures for handling redundancies) shall have effect as if Article 55 were omitted.

Regulations and orders

80.—(1) All regulations under this Order shall be subject to negative resolution.

(2) An order under Article 24 (3), 37 (2), 56 (4), 67 (1), 70 or 76 (11) shall come into operation on such date as is specified in the order and shall be laid before the Assembly as soon as may be after it is made but shall cease to have effect upon the expiration of a period of six months from the date on which it came into operation unless, before the expiration of that period, it is approved by a resolution of the Assembly.

(3) Regulations and orders under this Order may contain incidental, supplementary and transitional provisions.

Financial provisions

81. There shall be paid out of the Northern Ireland Redundancy Fund into the Consolidated Fund sums equal to the amount of—

- (a) any expenses incurred by the Department (including expenses incurred by persons acting on its behalf) in exercising its functions under Articles 42 to 46;
- (b) any increase attributable to provisions of this Order in the sums falling to be so paid under section 60 (4) of the Act of 1965.

Amendments, transitional provisions and repeals

82.—(1) The provisions of the Wages Councils Act (Northern Ireland) 1945 specified in Part I of Schedule 5, the provisions of the Act of 1965 specified in Part II of Schedule 5 and the statutory provisions specified in Part III of Schedule 5 shall have effect subject to the amendments so specified respectively, being minor amendments and amendments consequential on any provisions of this Order.

(2) The transitional provisions in Schedule 6 shall have effect.

(3) The statutory provisions specified in columns 1 and 2 of Schedule 7 are hereby repealed to the extent specified in column 3 of that Schedule.

N. E. Leigh

SCHEDULES

Article 4 (2).

SCHEDULE 1

THE LABOUR RELATIONS AGENCY

PART I

THE CONSTITUTION OF THE AGENCY

1. The Agency shall be a body corporate to which section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

2. The Agency shall consist of the following persons appointed by the Head of the Department, namely—

(a) a chairman; and

(b) 9 other members of whom—

(i) 3 shall be appointed after consultation with such organisations or associations of organisations representative of employers as appear to the Head of the Department to be appropriate;

(ii) 3 shall be appointed after consultation with such organisations or associations of organisations representative of employees as appear to the Head of the Department to be appropriate; and

(iii) 3 shall be appointed as appears to the Head of the Department to be appropriate.

3.—(1) A member of the Agency shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold his office, be eligible for re-appointment.

(2) Any member may at any time by notice in writing to the Head of the Department resign his office.

4. The Head of the Department may, by notice in writing addressed to a member, terminate his appointment as a member of the Agency if of the opinion that he is unfit to continue in office or incapable of performing his duties as a member.

5. The proceedings of the Agency shall not be invalidated by any vacancy in the membership of the Agency or by any defect in the appointment of any of its members.

6. The Agency shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown or as exempt from any tax, duty, rate, levy, or other charge whatsoever, whether general or local, and its property shall not be regarded as the property of, or property held on behalf of, the Crown.

PART II

SUPPLEMENTARY PROVISIONS AS TO THE AGENCY

Members

7. The Agency may pay to the chairman and to the other members of the Agency such remuneration and such allowances for expenses as the Department with the approval of the Department of Finance may determine.

8. In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (a) (which lists bodies of which all members are disqualified for membership of the Northern Ireland Assembly) the following entry shall be inserted at the appropriate point in alphabetical order:—

The Labour Relations Agency.

Panel of advisers

9.—(1) The Agency may appoint a panel of persons, who are not members of the Agency, from whom it may from time to time select persons to assist it in the discharge of its functions.

(a) 1975 c. 25.

(2) The number of persons which the Agency may appoint under this paragraph shall be determined by the Agency with the approval of the Department and the Department of Finance.

(3) The Agency may pay to persons appointed under this paragraph such fees and such allowances for expenses as the Agency with the approval of the Department and the Department of Finance may determine.

The seal

10. The fixing of the common seal of the Agency shall be authenticated by the signature of the chairman of the Agency or some other member thereof authorised either generally or specially by the Agency to act for that purpose.

Execution of contracts and instruments not under seal

11. Any contract or instrument which, if entered into or executed by an individual would not require to be under seal may be entered into or executed on behalf of the Agency by any person generally or specially authorised by the Agency to act for that purpose and any document purporting to be such a contract or instrument shall be deemed to be such a contract or instrument until the contrary is proved.

Staff

12. The number of persons employed by the Agency and the terms and conditions of employment of such persons shall be determined by the Agency with the approval of the Department and the Department of Finance.

13. The Agency may, in the case of such persons employed by it as may be determined by the Agency with the approval of the Department and the Department of Finance, pay to or in respect of them such pensions or gratuities, or provide and maintain for them such pension schemes (whether contributory or not) or contributory or other pension arrangements as may be so determined.

SCHEDULE 2

Article 69 (1).

CALCULATION OF NORMAL WORKING HOURS AND A WEEK'S PAY

PART I

NORMAL WORKING HOURS

1. For the purposes of this Schedule the cases where there are normal working hours include cases where the employee is entitled to overtime pay when employed for more than a fixed number of hours in a week or other period, and, subject to paragraph 2, in those cases that fixed number of hours shall be the normal working hours.

2. If in such a case—

(a) the contract of employment fixes the number, or the minimum number, of hours of employment in the said week or other period (whether or not it also provides for the reduction of that number or minimum in certain circumstances), and

(b) that number or minimum number of hours exceeds the number of hours without overtime,

that number or minimum number of hours (and not the number of hours without overtime) shall be the normal working hours.

PART II

A WEEK'S PAY

Employments for which there are normal working hours

3.—(1) This paragraph and paragraph 4 shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date.

(2) Subject to paragraph 4, if an employee's remuneration for employment in normal working hours, whether by the hour or week or other period, does not vary with the amount of work done in the period, the amount of a week's pay shall be the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.

(3) Subject to paragraph 4, if sub-paragraph (2) does not apply, the amount of a week's pay shall be the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of 12 weeks—

- (a) where the calculation date is the last day of a week, ending with that week;
- (b) in any other case, ending with the last complete week before the calculation date.

(4) References in this paragraph to remuneration varying with the amount of work done include references to remuneration which may include any commission or similar payment which varies in amount.

4.—(1) This paragraph shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date, and he is required under that contract to work during those hours on days of the week or at times of the day which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of the said days or times.

(2) The amount of a week's pay shall be the amount of remuneration for the average weekly number of normal working hours (calculated in accordance with sub-paragraph (3)) at the average hourly rate of remuneration (calculated in accordance with sub-paragraph (4)).

(3) The average number of weekly hours shall be calculated by dividing by 12 the total number of the employee's normal working hours during the period of 12 weeks—

- (a) where the calculation date is the last day of a week, ending with that week;
- (b) in any other case, ending with the last complete week before the calculation date.

(4) The average hourly rate of remuneration shall be the average hourly rate of remuneration payable by the employer to the employee in respect of the period of 12 weeks—

- (a) where the calculation date is the last day of a week, ending with that week;
- (b) in any other case, ending with the last complete week before the calculation date.

5.—(1) For the purpose of paragraphs 3 and 4, in arriving at the average hourly rate of remuneration only the hours when the employee was working, and only the remuneration payable for, or apportionable to, those hours of work, shall be brought in; and if for any of the 12 weeks mentioned in either of those paragraphs no such remuneration was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring the number of weeks of which account is taken up to 12.

(2) Where, in arriving at the said hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and the amount of that remuneration was greater than it would have been if the work had been done in normal working hours, account shall be taken of that remuneration as if—

- (a) the work had been done in normal working hours; and
- (b) the amount of that remuneration had been reduced accordingly.

(3) For the purpose of the application of sub-paragraph (2) to a case falling within paragraph 2, sub-paragraph (2) shall be construed as if for the words "had been done in normal working hours", in each place where those words occur, there were substituted the words "had been done in normal working hours falling within the number of hours without overtime".

Employments for which there are no normal working hours

6.—(1) This paragraph shall apply if there are no normal working hours for an employee when employed under the contract of employment in force on the calculation date.

(2) The amount of a week's pay shall be the amount of the employee's average weekly remuneration in the period of 12 weeks—

- (a) where the calculation date is the last day of a week, ending with that week;
- (b) in any other case, ending with the last complete week before the calculation date.

(3) In arriving at the said average weekly rate of remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring the number of weeks of which account is taken up to 12.

Supplemental

7. In any case in which an employee has not been employed for a sufficient period to enable a calculation to be made under any of the foregoing provisions of this Part the amount of a week's pay shall be an amount which fairly represents a week's pay; and in determining that amount the tribunal shall apply as nearly as may be such of the foregoing provisions of this Part as it considers appropriate, and may have regard to such of the following considerations as it thinks fit, that is to say—

- (a) any remuneration received by the employee in respect of the employment in question;
- (b) the amount offered to the employee as remuneration in respect of the employment in question;
- (c) the remuneration received by other persons engaged in relevant comparable employment with the same employer;
- (d) the remuneration received by other persons engaged in relevant comparable employment with other employers.

8. In arriving at an average hourly rate or average weekly rate of remuneration under this Part—

- (a) account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of Schedule 1 to the Act of 1965 (computation of period of employment) a period of employment with the former employer counts as part of the employee's continuous period of employment with the later employer, and
- (b) "week" means, for an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day, and, for other employees, means a week ending with Saturday.

9. Where under this Part account is to be taken of remuneration or other payments for a period which does not coincide with the periods for which the remuneration or other payments are calculated, the remuneration or other payments shall be apportioned in such manner as may be just.

10. The Department may by regulations provide that in prescribed cases the amount of a week's pay shall be calculated in such manner as the regulations may prescribe.

SCHEDULE 2 TO THE CONTRACTS OF EMPLOYMENT AND REDUNDANCY PAYMENTS ACT
(NORTHERN IRELAND) 1965, AS SUBSTITUTED

RIGHTS OF EMPLOYEE IN PERIOD OF NOTICE

Preliminary

1.—(1) In this Schedule—

- (a) the “period of notice” means the period of notice required by section 1 (1) or, as the case may be, section 1 (2); and
- (b) “normal working hours” shall be construed in accordance with Part I of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1976.

(2) For the purposes of Part II of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1976 as it applies for the calculation of a week’s pay for the purposes of this Schedule, the calculation date is the day immediately preceding the first day of the period of notice.

Employments for which there are normal working hours

2.—(1) If an employee has normal working hours under the contract of employment in force during the period of notice, and if during any part of those normal working hours—

- (a) the employee is ready and willing to work but no work is provided for him by his employer; or
- (b) the employee is incapable of work because of sickness or injury; or
- (c) the employee is absent from work in accordance with the terms of his employment relating to holidays,

then the employer shall be liable to pay the employee for the part of normal working hours covered by heads (a), (b) and (c) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a week’s pay by the number of normal working hours.

(2) Any payments made to the employee by his employer in respect of the relevant part of the period of notice whether by way of sick pay, holiday pay or otherwise, shall go towards meeting the employer’s liability under this paragraph.

(3) Where notice was given by the employee, the employer’s liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

Employments for which there are no normal working hours

3.—(1) If an employee does not have normal working hours under the contract of employment in force in the period of notice the employer shall be liable to pay the employee for each week of the period of notice a sum not less than a week’s pay.

(2) Subject to the next following sub-paragraph, the employer’s obligation under this paragraph shall be conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week’s pay.

(3) Sub-paragraph (2) shall not apply—

- (a) in respect of any period during which the employee is incapable of work because of sickness or injury, or
- (b) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays,

and any payment made to an employee by his employer in respect of such a period, whether by way of sick pay, holiday pay or otherwise, shall be taken into account for the purposes of this paragraph as if it were remuneration paid by the employer in respect of that period.

(4) Where the notice was given by the employee, the employer's liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

Sickness or industrial injury benefit

4.—(1) The following provisions of this paragraph shall have effect where the arrangements in force relating to the employment are such that—

(a) payments by way of sick pay are made by the employer to employees to whom the arrangements apply, in cases where any such employees are incapable of work because of sickness or injury; and

(b) in calculating any payment so made to any such employee an amount representing, or treated as representing, sickness benefit or industrial injury benefit is taken into account, whether by way of deduction or by way of calculating the payment as a supplement to that amount.

(2) If during any part of the period of notice the employee is incapable of work because of sickness or injury, and—

(a) one or more payments, by way of sick pay are made to him by the employer in respect of that part of the period of notice, and

(b) in calculating any such payment such an amount as is referred to in subparagraph (1) (b) is taken into account as therein mentioned,

then for the purposes of this Schedule the amount so taken into account shall be treated as having been paid by the employer to the employee by way of sick pay in respect of that part of that period, and shall go towards meeting the liability of the employer under paragraph 2 or paragraph 3 accordingly.

Absence on leave granted at request of employee

5. The employer shall not be liable under the foregoing provisions of this Schedule to make any payment in respect of a period during which the employee is absent from work with the leave of the employer granted at the request of the employee.

Notice given before a strike

6. No payment shall be due under this Schedule in consequence of a notice to terminate a contract given by an employee if, after the notice is given and on or before the termination of the contract, the employee takes part in a strike of employees of the employer.

Termination of employment during period of notice

7.—(1) If, during the period of notice, the employer breaks the contract of employment, payments received under this Schedule in respect of the part of the period after the breach shall go towards mitigating the damages recoverable by the employee for loss of earnings in that part of the period of notice.

(2) If, during the period of notice, the employee breaks the contract and the employer rightfully treats the breach as terminating the contract, no payment shall be due to the employee under this Schedule in respect of the part of the period of notice falling after the termination of the contract.

SCHEDULE 4

Article 71.

DEATH OF EMPLOYEE OR EMPLOYER

PART I

GENERAL

Introductory

1. In this Schedule "the relevant provisions" means the provisions of this Order (including this Schedule) conferring rights on employees, or connected therewith.

Institution or continuance of tribunal proceedings

2. Where an employee or employer has died tribunal proceedings arising under any of the relevant provisions may be instituted or continued by a personal representative of the deceased employee or, as the case may be, defended by a personal representative of the deceased employer.

3.—(1) If there is no personal representative of a deceased employee, tribunal proceedings arising under any of the relevant provisions (or proceedings to enforce a tribunal award made in any such proceedings) may be instituted or continued on behalf of the estate of the deceased employee by such other person as the industrial tribunal may appoint being either—

(a) a person authorised by the employee to act in connection with the proceedings before the employee's death; or

(b) the widower, widow, child, father, mother, brother or sister of the deceased employee,

and references in this Schedule to a personal representative shall be construed as including such a person.

(2) In such a case any award made by the industrial tribunal shall be in such terms and shall be enforceable in such manner as may be provided by regulations made by the Department.

4.—(1) Subject to any specific provision of this Schedule to the contrary, in relation to an employee or employer who has died—

(a) any reference in the relevant provisions to the doing of anything by or in relation to an employee or employer shall be construed as including a reference to the doing of that thing by or in relation to any personal representative of the deceased employee or employer; and

(b) any reference in the said provisions to a thing required or authorised to be done by or in relation to an employee or employer shall be construed as including a reference to any thing which, in accordance with any such provision as modified by this Schedule (including head (a)), is required or authorised to be done by or in relation to any personal representative of the deceased employee or employer.

(2) Nothing in this paragraph shall prevent references in the relevant provisions to a successor of an employer from including a personal representative of a deceased employer.

Rights and liabilities accruing after death

5. Any right arising under any of the relevant provisions as modified by this Schedule shall, if it had not accrued before the death of the employee in question, nevertheless devolve as if it had so accrued.

6. Where by virtue of any of the relevant provisions as modified by this Schedule a personal representative of a deceased employer is liable to pay any amount and that liability had not accrued before the death of the employer, it shall be treated for all purposes as if it were a liability of the deceased employer which had accrued immediately before the death.

Death during protected period

7. Where an industrial tribunal makes a protective award under Article 51 and an employee of a description to which the award relates dies during the protected period, the award shall be treated in his case as if it specified a protected period of such length as to end on the date of his death.

PART II

UNFAIR DISMISSAL

Introductory

8. In this Part of this Schedule “the unfair dismissal provisions” means so much of this Order (including this Schedule) as relates to unfair dismissal.

Death during notice period

9. Where an employer has given notice to an employee to terminate his contract of employment and before that termination the employee or the employer dies, the unfair dismissal provisions shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

10. Where the employee’s contract of employment has been terminated by the employer and by virtue of Article 21 (5) a date later than the effective date of termination as defined by Article 21 (4) is to be treated as the effective date of termination for the purposes of certain of the unfair dismissal provisions, and before that later date the employee or the employer dies, Article 21 (5) shall have effect as if the notice referred to in that paragraph as required to be given by the employer would have expired on the death.

Remedies for unfair dismissal

11. Where an employee has died, then, unless an order for reinstatement or re-engagement has already been made, the unfair dismissal provisions relating to reinstatement and re-engagement shall not apply; and accordingly if the industrial tribunal finds that the grounds of the complaint are well-founded the case shall be treated as falling within Article 32 (5) as a case in which no order is made under Article 31.

12. If an order for reinstatement or re-engagement has been made and the employee dies before the order is complied with—

- (a) if the employer has before the death refused to reinstate or re-engage the employee in accordance with the order, Article 32 (2) and (3) shall apply and an award shall be made under Article 32 (2) (b) unless the employer satisfies the tribunal that it was not practicable at the time of the refusal to comply with the order;
- (b) if there has been no such refusal, Article 32 (1) shall apply if the employer fails to comply with any ancillary terms of the order which remain capable of fulfilment after the employee’s death as it would apply to such a failure to comply fully with the terms of an order where the employee had been reinstated or re-engaged.

SCHEDULE 5

Article 82 (1).

AMENDMENTS

PART I

AMENDMENTS OF WAGES COUNCILS ACT (NORTHERN IRELAND) 1945 (c. 21)

1. For any reference in Part I and section 22 of the Act to a commission of inquiry substitute a reference to the Agency.

2. In section 6 (2) for the words from “those organisations jointly provide” to “employment for those workers” substitute the words “the existence of a wages council is no longer necessary for the purpose of maintaining a reasonable standard of remuneration for the workers with respect to whom that wages council operates”.

3. Section 6 (5) shall cease to have effect.

4. After section 6 insert the following section:—

“Exclusion orders. 6A.—(1) The Department may by order exclude from the field of operation of a wages council the workers of any undertaking in relation

to whom, or a substantial proportion of whom, there are, in the opinion of the Department, satisfactory arrangements for collective bargaining.

(2) An application for an order under subsection (1) may be made by either party to the arrangements for collective bargaining mentioned in that subsection or by both such parties jointly.

(3) Before making an order under subsection (1) the Department shall consult the wages council whose field of operation would be affected by such order and take into consideration any observations which that wages council may make.”.

5. In section 7 (2) for the words “Ministry or any government department” where they twice occur substitute the words “Department, the Labour Relations Agency or any government department” and for the words “Ministry or, as the case may be, to that department” and “Ministry or, as the case maybe, that department” substitute the words “Department, the Labour Relations Agency or that government department (as the case may be)”.

6. In section 7 after subsection (2) add the following subsection—

“(3) A wages council may encourage the development of effective consultation and negotiations in relation to matters concerning the relationship between employers and workers represented on that wages council.”.

7. Section 9 (1) and Schedule 2 shall cease to have effect.

8. The provisions specified in column 1 of the following Table (which create offences) shall each have effect as if the maximum fine which may be imposed on summary conviction of any offence specified in that provision were a fine not exceeding the amount specified in column 3 of that Table instead of a fine not exceeding the amount specified in column 2 of that Table.

TABLE		
<i>Provision</i>	<i>Old maximum fine</i>	<i>New maximum fine</i>
Section 11 (2) (Failure to pay remuneration, etc.)	£20	£100
Section 15 (3) (Failure to keep records or post or give notices)	£20	£100
Section 17 (6) (Obstruction, etc.)	£20	£100
Section 18 (False records and false information)	£100	£400

9. In section 23 omit the words “a commission of inquiry”.

10. In section 24 (1) for the provision defining “wages council” and “commission of inquiry” substitute the words “‘wages council’ means a wages council established under this Act”.

PART II

AMENDMENTS OF CONTRACTS OF EMPLOYMENT AND REDUNDANCY PAYMENTS ACT (NORTHERN IRELAND) 1965 (c. 19)

1. In sections 1 (1) to (3) and 2 (minimum period of notice) for the words “twenty-six weeks”, wherever they occur, substitute the words “four weeks”.

2. In section 1 (1) for paragraphs (b) and (c) substitute the following paragraphs:—

“(b) shall be not less than one week’s notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years; and

(c) shall be not less than twelve weeks' notice if his period of continuous employment is twelve years or more.”.

3. In section 1 (4) (contract for a term certain to be treated in certain cases as a contract for an indefinite period) for the words “twenty-six weeks” substitute the words “twelve weeks”.

4. In section 4 (1) (written statement of terms of employment),—

(a) after the words “the date when the employment began”, insert the words “stating whether any employment with a previous employer counts as part of the employee’s continuous period of employment with him, and if so specifying the date on which the continuous period of employment began”;

(b) paragraph (cc) shall be omitted;

(c) for head (i) of paragraph (d) substitute the following head:—

“(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee’s entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);”;

(d) after paragraph (e) insert “and

(f) the title of the job which the employee is employed to do:”.

5. After section 4 (1) insert the following subsections:—

“(1A) Subject to subsection (1B), every statement given to an employee under subsection (1) shall include a note—

(a) specifying any disciplinary rules applicable to the employee, or referring to a document which is reasonably accessible to the employee and which specifies such rules;

(b) specifying, by description or otherwise—

(i) a person to whom the employee can apply if he is dissatisfied with any disciplinary decision relating to him; and

(ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment,

and the manner in which any such applications should be made;

(c) where there are further steps consequent upon any such application, explaining those steps or referring to a document which is reasonably accessible to the employee and which explains them; and

(d) stating whether a contracting-out certificate is in force for the employment in respect of which the statement is given,

and any reference in subsections (4) to (6) or in subsections (1) to (6) of section 5 to that which is, or is to be, included, given or referred to in a statement under subsection (1) shall be construed as including a reference to a note under this subsection, and any reference to that which is, or is to be included, given or referred to in a statement under subsection (4) shall be construed in a corresponding way.

(1B) Nothing in paragraph (d) of subsection (1A) shall be taken as authorising or requiring any tribunal acting under this Act to determine any question whether an employment is, has been or will be contracted-out employment.”.

6. After section 4 (6) insert the following subsections:—

“(6A) Where, after an employer has given to an employee a written statement in accordance with section 4 (1)—

(a) the name of the employer (whether an individual or a body corporate or partnership) is changed, without any change in the identity of the employer, or

(b) the identity of the employer is changed, in such circumstances that, in accordance with paragraph 10 or 11 of Schedule 1, the continuity of the employee’s period of employment is not broken,

and (in either case) the change does not involve any change in the terms (other than the names of the parties) included or referred to in the statement, then, the person who, immediately after the change, is the employer shall not be required to give to the employee a statement in accordance with section 4 (1), but, subject to subsection (6B), the change shall be treated as a change falling within subsection (4).

(6B) A written statement under this section which informs an employee of such a change in his terms of employment as is referred to in subsection (6A) (b) shall specify the date on which the employee's continuous period of employment began."

7. In section 4 (8) (exclusion for contract in writing) after paragraph (b) insert the following paragraph:—

"and

(c) such a note as is mentioned in section 4 (1A) has been given to the employee or he has reasonable opportunities of reading such a note in the course of his employment or such a note is made reasonably accessible to him in some other way;"

8. In section 4 (9) (part-time employment)—

(a) at the beginning insert the words "Subject to subsections (10) to (11A)," and
(b) for the words "twenty-one hours" substitute the words "sixteen hours".

9. For sections 4 (10) and (11) substitute the following subsections:—

"(10) If the employee's relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly, the employee shall nevertheless for a period of twenty-six weeks computed in accordance with the next following subsection be treated for the purposes of the foregoing subsection as if his contract normally involved employment for sixteen hours or more weekly.

(11) In computing the said period of twenty-six weeks no account shall be taken of any week—

- (a) during which the employee is in fact employed for sixteen hours or more;
- (b) during which the employee takes part in a strike or is absent from work because of a lock-out by his employer; or
- (c) during which there is no contract of employment but which, by virtue of paragraph 5 (1) of Schedule 1, counts in computing a period of continuous employment.

(11A) An employee whose relations with his employer are governed by a contract of employment which normally involves employment for eight hours or more, but less than sixteen hours, weekly shall nevertheless, if he has been continuously employed for a period of five years or more (computed in accordance with Schedule 1) be treated for the purposes of subsection (9) as if his contract normally involved employment for sixteen hours or more weekly."

10. In section 5 (references to tribunal) in subsection (7) for the words "under Part IV" substitute the words "under Article 59 of the Industrial Relations (Northern Ireland) Order 1976" and after that subsection add the following subsection:—

"(8) A tribunal shall not entertain a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was, in accordance with the regulations referred to in subsection (7) made before the end of the period of three months beginning with the date on which the employment ceased."

11. In section 6 (excluded categories of employees)—

(a) after subsection (1) insert the following subsection:—

"(1A) Section 1 shall not apply to a person employed under a contract made in contemplation of the performance of a specific task which is not

expected to last for more than twelve weeks, unless the employee has been continuously employed for a period of more than twelve weeks (computed in accordance with Schedule 1).”;

and

(b) in subsection (3) for the words from “father” to “daughter” substitute the words “husband or wife”.

12. In section 7 (power to vary number of weekly hours of employment necessary to qualify for rights) for subsections (1) and (2) substitute the following subsections:—

“(1) The Department shall have power by order to provide that this Part shall have effect as if—

(a) for each of the references to sixteen hours in section 4 (9) to (11A) and in paragraphs 3, 4, 4A, 4B and 4C of Schedule 1 there were substituted a reference to such other number of hours less than sixteen as may be specified in the order; and

(b) as if for each of the references to eight hours in section 4 (10) and (11A) and in paragraphs 4B and 4C of the said Schedule there were substituted a reference to such other number of hours less than eight as may be specified in the order.

(2) An order under the foregoing subsection shall affect the operation of Schedule 1 as respects periods before the order takes effect as well as respects later periods.”.

13. In section 11 (1) (general right to redundancy payments) at the end add “and Schedule 2 to the Industrial Relations (Northern Ireland) Order 1976”.

14. For subsections (3) to (5) of section 12 (disentitlement to redundancy payment where employee unreasonably refuses offer of renewal of contract or re-engagement) substitute the following subsections:—

“(3) If an employer makes an employee an offer (whether in writing or not) before the ending of his employment under the previous contract to renew his contract of employment, or to re-engage him under a new contract of employment, so that the renewal or re-engagement would take effect either immediately on the ending of his employment under the previous contract or after an interval of not more than four weeks thereafter the provisions of subsections (5) and (6) shall have effect.

(4) For the purposes of the application of the last preceding subsection to a contract under which the employment ends on a Friday, Saturday or Sunday—

(a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous contract if it takes effect on or before the next Monday after that Friday, Saturday or Sunday; and

(b) the interval of four weeks shall be calculated as if the employment had ended on that Monday.

(5) If an employer makes an employee such an offer as is referred to in subsection (3) and either—

(a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract; or

(b) the first mentioned provisions would differ (wholly or in part) from those corresponding provisions, but the offer constitutes an offer of suitable employment in relation to the employee;

and in either case the employee unreasonably refuses that offer, he shall not be entitled to a redundancy payment by reason of his dismissal.

(6) If an employee’s contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in subsection (3) and the provisions of the contract as renewed, or of the new

contract, as to the capacity and place in which he is employed, and as to the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions of the previous contract but the employment is suitable in relation to the employee, and during the trial period referred to in section 13 the employee unreasonably terminates the contract, or unreasonably gives notice to terminate it and the contract is thereafter, in consequence, terminated, he shall not be entitled to a redundancy payment by reason of his dismissal from employment under the previous contract.”.

15. For section 13 (dismissal by employer) substitute the following section:—

“Dismissal by employer. 13.—(1) In this Part “dismiss” and “dismissal” shall be construed in accordance with the provisions of this section and the next following section.

(2) Subject to the following provisions of this section and to the next following section, an employee shall be treated as dismissed by his employer, if, but only if—

- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
- (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
- (c) the employee terminates that contract, with or without notice, in circumstances (not falling within section 20 (4)) such that he is entitled to terminate it without notice by reason of the employer’s conduct.

(3) If an employee’s contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made by his employer before the ending of his employment under the previous contract, and the renewal or re-engagement takes effect either immediately on the ending of that employment or after an interval of not more than four weeks thereafter, then, subject to subsections (5) to (8), the employee shall not be regarded as having been dismissed by his employer by reason of the ending of his employment under the previous contract.

(4) For the purposes of the application of the last preceding subsection to a contract under which the employment ends on a Friday, Saturday or Sunday—

- (a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment if it takes effect on or before the Monday after that Friday, Saturday or Sunday, and
- (b) the interval of four weeks referred to in that subsection shall be calculated as if the employment had ended on that Monday.

(5) If in a case to which subsection (3) applies, the provisions of the contract as renewed, or the new contract, as to the capacity and place in which the employee is employed, and as to the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions of the previous contract, there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this section).

(6) The trial period shall begin with the ending of the employee’s employment under the previous contract and end with the expiration of the period of four weeks beginning with the date on which the employee starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with the next following subsection for the purpose of retraining the employee for employment under that contract.

- (7) Any such agreement shall—
- (a) be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract;
 - (b) be in writing;
 - (c) specify the date of the end of the trial period; and
 - (d) specify the terms and conditions of employment which will apply in the employee's case after the end of that period.

- (8) If during the trial period—
- (a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated; or
 - (b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,

then, unless the employee's contract of employment is again renewed, or he is again re-engaged under a new contract of employment, in circumstances such that subsection (3) again applies, he shall be treated as having been dismissed on the date on which his employment under the previous contract or, if there has been more than one trial period, the original contract ended for the reason for which he was then dismissed or would have been dismissed had the offer (or original offer) of renewed, or new, employment not been made, or, as the case may be, for the reason which resulted in that offer being made.

(9) Subject to the next following subsection and to the next following section, in this Part "the relevant date", in relation to the dismissal of an employee—

- (a) where his contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires;
- (b) where his contract of employment is terminated without notice, means the date on which the termination takes effect;
- (c) where he is employed under a contract for a fixed term and that term expires as mentioned in subsection (2) (b), means the date on which that term expires; and
- (d) where he is treated, by virtue of subsection (8), as having been dismissed on the termination of his employment under a previous contract, means—
 - (i) for the purposes of section 31, the date which is the relevant date as defined by paragraph (a), (b) or (c) in relation to the renewed, or new, contract, or, where there has been more than one trial period, the last such contract; and
 - (ii) for any other purpose, the date which is the relevant date as defined by paragraph (a), (b) or (c) in relation to the previous contract, or, where there has been more than one trial period, the original contract.

(10) Where the notice required to be given by an employer to terminate a contract of employment by section 1 (1) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the relevant date as defined by the last preceding subsection, then for the purposes of section 18 (1) and paragraphs 1 (1) and 5 (5) of Schedule 3 that later date shall be treated as the relevant date in relation to the dismissal."

16. In section 15 (2) omit the words “(calculated in accordance with Schedule 4)” and after that subsection insert the following subsection:—

“(2A) For the purposes of Part II of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1976 as it applies for the calculation of a week’s pay for the purposes of the last preceding subsection, the calculation date is the day immediately preceding the first of the four or, as the case may be, the six weeks referred to in section 16 (1).”.

17.—(1) In section 18 (1) for the words “one hundred and four weeks” substitute the words “two years”.

(2) In section 18 (3) for the words “13 (2)” substitute the words “13 (3)”.

(3) After section 18 (3) insert the following subsection:—

“(3A) Where by virtue of section 13 (10) a date is to be treated as the relevant date for the purposes of subsection (1) which is later than the relevant date as defined by subsection (9) of that section, then in determining for the purposes of section 11 (1) whether the employee has been continuously employed for the requisite period, the period of the interval between those two dates shall count as a period of employment notwithstanding that it does not count under Schedule 1.”.

(4) In section 18 (4) for the words “sections 27 and 34” substitute the words “sections 27, 34 and 34A”.

18. In section 20 (4) for the words “section 13 (1) (c)” substitute the words “section 13 (2) (c)”.

19.—(1) In section 23 (2) for the words “section 13 (2)” substitute the words “subsections (3) to (10) of section 13”.

(2) In section 23 (3) for the words from “but the employee” to the end of the subsection substitute the words “subsections (3) to (6) of section 12 shall have effect subject to the next following subsection, in relation to that offer as they would have had effect in relation to the like offer made by the previous owner.”.

(3) In section 23 (4) for the words “subsection (3) or subsection (4)” substitute the words “subsections (3) to (6)” and at the end of paragraph (b) insert the words “or, as the case may be, whether the employee acted reasonably in terminating the renewed; or new, employment during the trial period referred to in section 13.”.

20. After section 23 insert the following section:—

“Transfer
to Crown
employ-
ment.

23A.—(1) Section 23 shall apply to a transfer of functions from a person not acting on behalf of the Crown (in this section referred to as the transferor) to a Minister of the Crown, a Northern Ireland department or a department of the Government of the United Kingdom (in this section referred to as the transferee) as that section applies to a transfer of a business, but with the substitution for references to the previous owner and new owner of references to the transferor and transferee respectively.

(2) In so far as the renewal or re-engagement of the employee by the transferee is in employment otherwise than under a contract of employment—

(a) references in section 23 (and in sections 12 (4) to (6) and 13 (3) to (10) as they apply by virtue of that section) to a contract of employment or to the terms of such a contract shall be construed as references to employment otherwise than under such a contract and to the terms of such employment; and

(b) references in subsection (4) of that section, as modified by subsection (1) of this section, to the substitution of the transferee for the transferor shall be construed as references to the substitution

of employment by the transferee otherwise than under a contract of employment for employment by the transferor under such a contract.”.

21. For section 27 (3) to (6) (computation of period of employment as respects employment wholly or partly abroad) substitute the following subsections:—

“(3) Subject to the following provisions of this section, in computing, in relation to an employee, the period specified in section 18 (1), or the period specified in paragraph 1 of Schedule 3, a week of employment before 6th April 1975 shall not count if—

- (a) the employee was employed outside Northern Ireland during the whole or part of that week, and
- (b) no employer’s contribution in respect of him was paid in respect of the corresponding contribution week,

unless an employer’s contribution in respect of him was payable (though not in fact paid) in respect of the corresponding contribution week.

(4) For the purposes of the application of the last preceding subsection to a week of employment where the corresponding contribution week began before 5th October 1964, an employer’s contribution shall be treated as payable as mentioned in that subsection if such a contribution would have been so payable if the statutory provisions relating to national insurance which were in force on 5th October 1964 had been in force in that contribution week.

(4A) Subject to the following provisions of this section, in computing, in relation to an employee the period specified in section 18 (1) or the period specified in paragraph 1 of Schedule 3, a week of employment after the 6th April 1975 and before the day appointed for the coming into force of paragraph 21 of Part II of Schedule 5 to the Industrial Relations (Northern Ireland) Order 1976 shall not count if—

- (a) the employee was employed outside Northern Ireland during the whole or part of that week; and
- (b) he was not during that week an employed earner for the purposes of the Social Security (Northern Ireland) Act 1975.

(4B) Subject to the following provisions of this section, in computing in relation to an employee, either of those periods, a week of employment after the day so appointed shall not count if—

- (a) the employee was employed outside Northern Ireland during the whole or part of that week; and
- (b) he was not during that week an employed earner for the purposes of the Social Security (Northern Ireland) Act 1975 in respect of whom a secondary Class 1 contribution was payable under that Act (whether or not such a contribution was in fact paid).

(5) Where by virtue of subsection (3), (4A) or (4B) a week of employment does not count in computing such a period as is mentioned in those subsections, the continuity of that period shall not be broken by reason only that that week of employment does not count in computing that period.

(6) Any question arising under this section—

- (a) whether an employer’s contribution was paid, or was or would have been payable, as mentioned in subsection (3) or (4); or
- (b) whether a person was an employed earner for the purposes of the Social Security (Northern Ireland) Act 1975 and if so whether a secondary Class 1 contribution was payable in respect of him under that Act,

shall be determined by the Department of Health and Social Services; and any legislation (including regulations) as to the determination of questions which under that Act that Department is empowered to determine (including provisions as to the reference of questions for decision, or as to appeals, to the Court of Appeal) shall apply to the determination of any question by that Department under this section.”.

22. Renumber section 31 (claims for redundancy payments) as subsection (1) of that section and for the words "Part IV" substitute—

"Article 59 of the Industrial Relations (Northern Ireland) Order 1976; or

(d) a complaint relating to his dismissal has been presented by the employee under Article 29 of the Industrial Relations (Northern Ireland) Order 1976.

(2) An employee shall not by virtue of the preceding subsection lose his right to a redundancy payment if, during the period of six months immediately following the period mentioned in that subsection, the employee—

(a) makes such a claim as is referred to in paragraph (b) of that subsection,

(b) refers to a tribunal such a question as is referred to in paragraph (c) of that subsection, or

(c) makes such a complaint as is referred to in paragraph (d) of that subsection, and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment having regard to the reason shown by the employee for his failure to take any such step as is referred to in paragraph (a), (b) or (c) of this subsection within the period mentioned in the preceding subsection, and to all the other relevant circumstances."

23.—(1) In section 32 (1) at the end insert the following words "and in particular the provisions of section 13 shall apply accordingly."

(2) For section 32 (2) substitute the following subsection:—

"(2) Where the preceding subsection applies, and the employee's contract of employment is not renewed, and he is not re-engaged under a new contract of employment, so as to be treated, by virtue of section 13 (3), as not having been dismissed, he shall, without prejudice to section 13 (8) be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not so renewed and he is not so re-engaged are wholly or mainly attributable to one or other of the facts specified in paragraphs (a) and (b) of section 11 (2)."

(3) For section 32 (4) substitute the following subsection:—

"(4) In this section any reference to section 13 (3) includes a reference to the said section 13 (3) as applied by section 23 (2) or as so applied and, where appropriate, modified by section 23A (2), and where section 13 (3) applies with modifications in accordance with the said section 23A(2) the references in subsection (2) to renewal of or re-engagement under a contract of employment shall be construed as including references to renewal of or re-engagement in employment otherwise than under a contract of employment."

24. After section 34 insert the following section:—

"Modifica-
tion of
right to
redundancy
payment
where
payment
equivalent to
redundancy
payment has
previously
been paid.

34A.—(1) The provisions of this section shall have effect where—

(a) a payment has been made, whether in respect of the termination of any person's employment or in respect of lay-off or short-time,—

(i) in accordance with any provisions of a scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972; or

(ii) in accordance with any such arrangements as are mentioned in section 48 (3);

(b) he commences new, or renewed, employment; and

(c) the circumstances of the commencement of the new, or renewed, employment are such that, in determining for the purposes of section 11 (1) or Schedule 3 whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this section, be treated as not having been broken by the termination of the previous employment and the commencement of the new, or renewed, employment.

(2) Where the conditions mentioned in the preceding subsection are fulfilled, then in determining, for the purposes of section 11 (1) or Schedule 3 whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of the period of employment shall be treated as having been broken—

(a) in so far as the employment was under a contract of employment, at the date which was the relevant date in relation to the payment mentioned in paragraph (a) of the preceding subsection; or

(b) in so far as the employment was otherwise than under a contract of employment, at the date which would have been the relevant date in relation to that payment had the employment been under a contract of employment,

and accordingly no account shall be taken of any time before that date.”.

25. In section 35 (2) for the words ”section 13 (4)” substitute the words “section 13 (9) and (10)”.

26. After section 40 (2) insert the following subsection:—

“(2A) The Department may if it thinks fit pay a rebate to an employer who has paid an employee a redundancy payment in circumstances in which, owing to section 31, the employee had no right to, and the employer had no liability for, the payment, if the Department is satisfied that it would be just and equitable to do so having regard to all the relevant circumstances.”.

27. In section 44 after subsection (3) insert the following subsection:—

“(3A) Where, in any case to which section 40 (2A) applies, the Department refuses to pay a rebate, the employer may appeal to a tribunal; and if on any such appeal the tribunal is satisfied that it is just and equitable having regard to all the relevant circumstances that a rebate should be paid, the tribunal shall determine accordingly, and the Department shall comply with any such determination of a tribunal.”.

28. For section 54 (associated companies) substitute the following section:—

“Associated employers. 54.—(1) Any reference in Part II to re-engagement by the employer shall be construed as a reference to re-engagement by the employer or by any associated employer, and any reference in that Part to an offer made by the employer shall be construed as including a reference to an offer made by an associated employer.

(2) The preceding subsection shall not affect the operation of section 23 in a case where the previous owner and the new owner (as defined by that section) are associated employers; and where that section applies, the preceding subsection shall not apply.

(3) Where an employee is dismissed by his employer and—

(a) neither of the conditions specified in paragraphs (a) and (b) of section 11 (2) is fulfilled, but

(b) one or other of those conditions would be fulfilled if the business of the employer together with the business or businesses of his associated employers were treated as one business,

that condition shall for the purposes of Part II be taken to be fulfilled in relation to the dismissal of the employee.

(4) For the purposes of this section any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression “associated employer” shall be construed accordingly.”.

29. For paragraph 1 (1) of Schedule 1 (computation of period of employment) substitute the following sub-paragraph:—

“(1) Where an employee’s period of employment is, for the purposes of any statutory provision (including any statutory provision contained in this Act), to be computed in accordance with this Schedule, it shall be computed in weeks, and in any such statutory provision which refers to a period of employment expressed in years, a year means 52 weeks (whether continuous or discontinuous) which count in computing a period of employment.”

30. In paragraphs 3 and 4 of Schedule 1 for the words “twenty-one hours” wherever they occur substitute the words “sixteen hours”.

31. After paragraph 4 of Schedule 1 insert the following paragraphs:—

“4A.—(1) If the employee’s relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly, and but for that change the later weeks would count in computing a period of employment, or would not break the continuity of a period of employment, then those later weeks shall count in computing a period of employment or, as the case may be, shall not break the continuity of a period of employment, notwithstanding that change.

(2) Not more than twenty-six weeks shall count under this paragraph between any two periods falling under paragraph 4, and in computing the said figure of twenty-six weeks no account shall be taken of any week which counts in computing a period of employment, or does not break the continuity of a period of employment, otherwise than by virtue of this paragraph.

4B.—(1) An employee whose relations with his employer are governed, or have been from time to time governed, by a contract of employment which normally involves employment for eight hours or more, but less than sixteen hours, weekly shall nevertheless, if he satisfies the condition referred to in the next following sub-paragraph, be treated for the purposes of this Schedule (apart from this paragraph) as if his contract normally involved employment for sixteen hours or more weekly, and had at all times at which there was a contract during the period of employment of five years or more referred to in the next following sub-paragraph normally involved employment for sixteen hours or more weekly.

(2) The foregoing sub-paragraph shall apply if the employee, on the date by reference to which the length of any period of employment falls to be ascertained in accordance with the provisions of this Schedule, has been continuously employed, within the meaning of the next following sub-paragraph, for a period of five years or more.

(3) In computing, for the purposes of the foregoing sub-paragraph, an employee’s period of employment the provisions of this Schedule (apart from this paragraph) shall apply but as if, in paragraphs 3 and 4, for the words “sixteen hours” wherever they occur, there were substituted the words “eight hours”.

4C.—(1) If an employee has, at any time during the relevant period of employment, been continuously employed for a period which qualifies him for any right which requires a qualifying period of continuous employment computed in accordance with this Schedule, then, he shall be regarded for the purposes of qualifying for that right as continuing to satisfy that requirement until the condition referred to in sub-paragraph (3) occurs.

(2) In this paragraph the relevant period of employment means the period of employment ending on the date by reference to which the length of any period of employment falls to be ascertained which would be continuous (in accordance with the provisions of this Schedule) if at all relevant times the employee’s relations with the employer had been governed by a contract of employment which normally involved employment for sixteen hours or more weekly.

(3) The condition which defeats the operation of sub-paragraph (1) is that in a week subsequent to the time at which the employee qualified as referred to in that sub-paragraph—

(a) his relations with his employer are governed by a contract of employment which normally involves employment for less than eight hours weekly; and

(b) he is employed in that week for less than sixteen hours.

(4) If, in a case in which an employee is entitled to any right by virtue of sub-paragraph (1), it is necessary for the purpose of ascertaining the amount of his entitlement to determine for what period he has been continuously employed, he shall be regarded for that purpose as having been continuously employed throughout the relevant period.”

32. In paragraph 5 (1) of Schedule 1 for the words “or paragraph 4” substitute the words “4 or 4A”.

33. In paragraph 5 (2) of Schedule 1 for the words “two periods falling under paragraphs 3 and 4” substitute the words “periods falling under paragraph 3, 4 or 4A”.

34. In paragraph 7 (1) of Schedule 1, for the words “paragraph 4 or paragraph 5”, substitute the words “4, 4A, or 5”.

35. For paragraph 11 of Schedule 1, substitute the following paragraph:—

“11.—(1) If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters his employment is an associated employer of the first mentioned employer, the employee’s period of employment at that time shall count as a period of employment with the second mentioned employer and the change of employer shall not break the continuity of the period of employment.

(2) For the purposes of this paragraph, any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression “associated employer” shall be construed accordingly.”

36. After paragraph 11 of Schedule 1 insert the following paragraph:—

“11A.—(1) Subject to the following provisions of this paragraph, the provisions of this Schedule shall have effect (for the purpose of computing an employee’s period of employment, but not for any other purpose) in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees, and accordingly, except where the context otherwise requires, references to an employer shall be construed as including a reference to the Crown.

(2) In this paragraph, subject to the next following sub-paragraph, “Crown employment” means employment under or for the purposes of a Northern Ireland department or a department of the Government of the United Kingdom.

(3) This paragraph does not apply to service as a member of the naval, military or air forces of the Crown, or of any women’s service administered by the Defence Council, but does apply to employment by any association established for the purposes of the Auxiliary Forces Act 1953.

(4) In so far as a person in Crown employment is employed otherwise than under a contract of employment, references in this Schedule to an employee’s relations with his employer being governed by a contract of employment which normally involves employment for a certain number of hours weekly shall be modified accordingly.

(5) The reference in paragraph 10 (2) to an undertaking shall be construed as including a reference to any function of (as the case may require) a Minister of the Crown or a Northern Ireland department or a department of the Government of the United Kingdom.”

37. In paragraph 1 (1) of Schedule 3 (computation of period of employment for calculating redundancy payments) in head (a) omit the word “and”, and after head (b) insert the following head:—

“and

(c) the period of any such interval as is referred to in section 18 (3A) counted as a period of employment notwithstanding that it does not count under that Schedule.”.

38. In paragraph 1 (2) of Schedule 3 for the words “or 34” substitute the words”, section 34 or section 34A”.

39. For paragraph 5 of Schedule 3 (computation of and limit on a week’s pay for calculating redundancy payments) substitute the following paragraph:—

“5.—(1) For the purposes of Part II of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1976 as it applies for the calculation of a week’s pay for the purposes of this Schedule, the calculation date is, subject to sub-paragraph (3), the date on which notice would have been given by the employer had the conditions referred to in the next following sub-paragraph been fulfilled (whether those conditions were in fact fulfilled or not).

(2) Those conditions are that the contract was terminable by notice and was terminated by the employer giving such notice as is required to terminate that contract by section 1 (1) and that the notice expired on the relevant date.

(3) Where by virtue of section 13 (10) a date is to be treated as the relevant date for the purposes of certain provisions of this Act (which do not include this sub-paragraph) which is later than the relevant date as defined by subsection (9) of that section, then, for the purposes of Part II of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1976 as it applies for the calculation of a week’s pay for the purposes of this Schedule, the calculation date is the relevant date as defined by the said subsection (9).

(4) Notwithstanding anything in the said Part II of Schedule 2, the amount of a week’s pay for the purpose of calculating a redundancy payment shall not exceed £80.

(5) Without prejudice to the generality of the power under Article 70 of the Industrial Relations (Northern Ireland) Order 1976 to make transitional provision in an order under that Article, such an order may provide that it shall apply in the case of a dismissal in relation to which the relevant date for the purposes of this sub-paragraph falls after the order comes into operation, notwithstanding that the relevant date for the purposes of other provisions of this Act falls before the order comes into operation.”.

40. In paragraph 9 of Schedule 3 after the word “week” insert the words “,except in the expression “a week’s pay”,” and omit the words from “and” to the end.

41. For paragraphs 3 and 4 of Schedule 5 (renewal of employment by personal representative of deceased employer) substitute the following paragraphs:—

“3. Where by virtue of subsection (1) of section 32 the death of the deceased employer is to be treated for the purposes of this Act as a termination by him of the contract of employment, section 13 shall have effect subject to the following modifications:—

(a) for subsection (3) there shall be substituted the following subsection:—

“(3) If an employee’s contract of employment is renewed, or he is re-engaged under a new contract of employment, by a personal representative of the deceased employer and the renewal or re-engagement takes effect not later than eight weeks after the death of the deceased employer, then, subject to subsections (5) and (8), the employee shall not be regarded as having been dismissed by reason of the ending of his employment under the previous contract.”;

- (b) in subsection (4) paragraph (a) shall be omitted and in paragraph (b) for the words “four weeks” there shall be substituted the words “eight weeks”;
 - (c) in subsections (7) and (8) references to the employer shall be construed as references to the personal representative of the deceased employer.
4. Where by reason of the death of the deceased employer the employee is treated for the purposes of this Act as having been dismissed by him, section 12 shall have effect subject to the following modifications:—
- (a) for subsection (3) there shall be substituted the following subsection—
 - “(3) If a personal representative of the deceased employer makes an employee an offer (whether in writing or not) to renew his contract of employment, or to re-engage him under a new contract of employment, so that the renewal or re-engagement would take effect not later than eight weeks after the death of the deceased employer the provisions of subsections (5) and (6) shall have effect.”;
 - (b) in subsection (4) paragraph (a) shall be omitted and in paragraph (b) for the words “four weeks” there shall be substituted the words “eight weeks”;
 - (c) in subsection (5) the reference to the employer shall be construed as a reference to the personal representative of the deceased employer.”.
42. In paragraph 5 of Schedule 5 at the end insert “or, as the case may be, whether the employee acted reasonably in terminating the renewed, or new, employment during the trial period referred to in section 13.”.
43. Paragraph 6 of Schedule 5 shall be omitted.
44. In paragraph 7 of Schedule 5 for the words from “as mentioned” to “paragraph (3)” substitute the words “by a personal representative of the deceased employer”.
45. Paragraph 12 of Schedule 5 shall be omitted.
46. Renumber paragraph 16 of Schedule 5 (death of employee during notice period) as sub-paragraph (1) of that paragraph and after that sub-paragraph insert the following sub-paragraph:—
- “(2) Where the employee’s contract of employment has been terminated by the employer and by virtue of section 13 (10) a date later than the relevant date as defined by subsection (9) of that section is to be treated as the relevant date for the purposes of certain provisions of this Act, and before that later date the employee dies, the said subsection (10) shall have effect as if the notice referred to in that subsection as required to be given by an employer would have expired on the employee’s death.”.
47. Renumber paragraph 17 of Schedule 5 (death of employee after offer of alternative employment) as sub-paragraph (1) of that paragraph.
48. In that sub-paragraph for the words from “subsection (3)” to the end substitute the words “subsection (5) of section 12 shall apply as if for the words “the employee unreasonably refuses” there were substituted the words “it would have been unreasonable on the part of the employee to refuse”.”.
49. After that sub-paragraph insert the following sub-paragraph:—
- “(2) Where an employee’s contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period the employee dies without having terminated or having given notice to terminate the contract, subsection (6) of that section shall apply as if for the words from “and during the trial period” to “terminated” there were substituted the words “and it would have been unreasonable for the employee, during the trial period referred to in section 13, to terminate or give notice to terminate the contract”.”.
50. After paragraph 17 of Schedule 5, insert the following paragraph:—
- “17A. Where an employee’s contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period he gives notice to terminate the contract but dies before the expiry of that

notice sections 12 (6) and 13 (8) (a) shall have effect as if that notice had expired and the contract had thereby been terminated on the date of the employee's death."

51. Renumber paragraph 20 of Schedule 5 as sub-paragraph (1) of that paragraph and—

(a) in that sub-paragraph after the words "relevant date" insert the words "subsection (1) of"; and

(b) after that sub-paragraph insert the following sub-paragraph:—

"(2) In relation to the making of a claim by a personal representative of a deceased employee who dies after the end of the period of six months beginning with the relevant date and before the end of the following period of six months, subsection (2) of section 31 shall apply with the substitution, for the words "six months", of the words "one year"."

52. After paragraph 21 of Schedule 5 insert the following paragraph:—

"21A.—(1) If there is no personal representative of a deceased employee, tribunal proceedings arising under any of the provisions of this Act (or proceedings to enforce a tribunal award made in any such proceedings) may be instituted or continued on behalf of the estate of the deceased employee by such other person as the tribunal may appoint being either—

(a) a person authorised by the employee to act in connection with the proceedings before the employee's death; or

(b) the widower, widow, child, father, mother, brother or sister of the deceased employee,

and references in this Part to a personal representative shall be construed as including such a person.

(2) In such a case any award made by the tribunal shall be in such terms and shall be enforceable in such manner as may be provided by regulations made by the Department, subject to negative resolution."

PART III

MISCELLANEOUS AMENDMENTS

The Trade Union Act 1871

(35 & 36 Vict. c. 31).

In section 4 (4) after the word "agreement" insert the words "(other than a collective agreement within the meaning of Article 2 (2) of the Industrial Relations (Northern Ireland) Order 1976)".

The Trade Disputes Act 1906

(6 Edw. 7 c. 47).

In section 5 (3) in the definition of trade dispute, for the words from "means" to the end of that definition substitute the words "has the same meaning as in the Industrial Relations (Northern Ireland) Order 1976".

The Industrial Courts Act 1919

(9 & 10 Geo. 5 c. 69).

In section 8 in the definition of "trade dispute" for the words from "means" to the end of that definition substitute the words "has the same meaning as in the Industrial Relations (Northern Ireland) Order 1976".

The Social Security Pensions (Northern Ireland) Order 1975
(S. I. 1975/1503 (N.I. 15)).

In Article 33 (8) in the definition of "independent trade union" for the words from "means" to the end of that definition substitute the words "has the same meaning as in the Industrial Relations (Northern Ireland) Order 1976".

After Article 33 (8) insert the following paragraph:—

"(9) A trade union shall be treated as recognised for the purpose of this Article not only if it is recognised for the purpose of collective bargaining, but also if the Labour Relations Agency has made a recommendation under Article 7 (1) of the Industrial Relations (Northern Ireland) Order 1976 for recognition of that union."

SCHEDULE 6

Article 82 (2).

TRANSITIONAL PROVISIONS

1.—(1) The provisions of this Order relating to unfair dismissal shall apply to dismissals where the effective date of termination falls on or after the date on which Article 20 comes into operation.

(2) Where the notice required to be given by an employer to terminate a contract of employment by section 1 (1) of the Act of 1965 (minimum period of notice) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the effective date of termination, that later date shall be treated as the effective date of termination for the purposes of sub-paragraph (1).

2. The provisions of Articles 42 and 43 shall apply in relation to an employer who becomes insolvent (within the meaning of those Articles) after the coming into operation of those Articles, and shall in such a case apply to any debts mentioned in Article 42 and to any unpaid relevant contributions (within the meaning of Article 43), whether falling due before or after the coming into operation of those Articles.

3. Where any provision of this Order increases the penalty for an offence under any other statutory provision, that increase shall not have effect in relation to an offence committed before the coming into operation of the relevant provision.

4.—(1) Any provision of Part II of Schedule 5 so far as it amends the Act of 1965 as respects entitlement to or the computation of a redundancy payment or the reference of questions to industrial tribunals concerning such entitlement or computation, shall, subject to sub-paragraph (2), have effect in relation to dismissals and to lay-off or short-time where the relevant date falls after the coming into operation of the relevant provision.

(2) Where the notice required to be given by an employer to terminate a contract of employment by section 1 (1) of the Act of 1965 (minimum period of notice) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer expire on a date later than the relevant date as defined by section 13 (9) of the said Act of 1965, that later date shall be treated as the relevant date for the purposes of sub-paragraph (1).

5. The provisions of this Order which affect the computation of an employee's period of continuous employment for the purposes of this Order or any other statutory provision shall have effect in relation to any week or event, whether falling or occurring (wholly or partly) before or after the coming into operation of the relevant provision, where the computation falls to be made after the coming into operation of that provision.

6.—(1) The amendments made by Part II of Schedule 5 shall not affect the validity of any statement given to an employee under Part I of the Act of 1965 before the coming into operation of that Part, but (except as provided by sub-paragraph (2)) the coming into operation of those amendments shall be deemed to be such a change as is mentioned in section 4 (4) of the Act of 1965.

(2) On the coming into operation of paragraph 7 of Part II of Schedule 5 an employee shall not be treated as ceasing to come within the exception in subsection (8) of section 4 of the Act of 1965 by reason only that the condition specified in paragraph (c) of subsection (8) is not fulfilled; but he shall be treated as ceasing to come within that exception unless that condition is fulfilled not more than one month after the coming into operation of the said paragraph 7.

Article 82 (3).

SCHEDULE 7

REPEALS

Chapter or Number	Short Title	Extent of Repeal
38 & 39 Vict. c. 86.	The Conspiracy and Protection of Property Act 1875.	In section 3, the paragraph inserted by section 1 of the Trade Disputes Act 1906.
6 Edw. 7 c. 47. 1945 c. 21.	The Trade Disputes Act 1906. The Wages Councils Act (Northern Ireland) 1945.	Sections 1 and 3. Section 6 (5). Section 9 (1). In section 23 the words "a commission of inquiry". Schedule 2.
1965 c. 19.	The Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.	Section 4 (1) (cc). In section 15 (2) the words "(calculated in accordance with Schedule 4)". Section 52 (1) to (4). Section 60 (4) (c). In paragraph 9 of Schedule 3 the words from "and" to the end of the paragraph. Schedule 4. In Schedule 5, paragraphs 6 and 12. In Schedule 6, in paragraph 1 the words from "and paragraph 5" onwards; and paragraph 13.
1973 c. 38.	The Social Security Act 1973.	In Schedule 27, paragraph 117.
1975 c. 18.	The Social Security (Consequential Provisions) Act 1975.	In Schedule 2, in paragraph 83 the words "27 (3) and (4A) and" and paragraph 84.
S.I. 1975/1503 (N.I. 15).	The Social Security Pensions (Northern Ireland) Order 1975.	Article 32 (5).
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Part III of Schedule 1, in the entry relating to members of Wages Councils and other persons appointed under the Wages Councils Act (Northern Ireland) 1945, the words "or member of a Commission of Inquiry appointed under paragraph 1 (a) of Schedule 2 to that Act".

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order establishes the Labour Relations Agency which has the functions conferred on it by Part II. Part III confers rights on certain employees in relation to unfair dismissal, the insolvency of an employer and written reasons for dismissal and provides remedies for breach of those rights.

Part IV lays down procedures for the handling of redundancies and Part V contains certain miscellaneous and supplementary provisions relating to industrial relations and provides for the amendment of certain existing legislation.

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