1994 No. 3

INDUSTRIAL RELATIONS

Industrial Relations (Continuity of Employment) Regulations (Northern Ireland) 1994

Made	*11th January 1994*
Coming into operation . .	*7th February 1994*

The Department of Economic Development(**a**), in exercise of the powers conferred on it by Article 68(4) of the Industrial Relations (Northern Ireland) Order 1976(**b**) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Industrial Relations (Continuity of Employment) Regulations (Northern Ireland) 1994 and shall come into operation on 7th February 1994.

(2) The Industrial Relations (Continuity of Employment) Regulations (Northern Ireland) 1976(**c**) are hereby revoked.

Interpretation

2. In these Regulations—

"the No. 1 Order" means the Industrial Relations (Northern Ireland) Order 1976;

"relevant compromise contract" means—

(*a*) any agreement authorised by Article 78(2)(*f*) of the No. 1 Order(**d**) to refrain from instituting or continuing any proceedings arising out of a contravention, or alleged contravention, of Article 20 of that Order before an industrial tribunal; or

(*b*) any contract authorised by Article 77(4)(*aa*) of the Sex Discrimination (Northern Ireland) Order 1976(**e**) settling a complaint arising out of a dismissal.

(**a**) Formerly the Department of Manpower Services; *see* S.I. 1982/846 (N.I. 11) Article 3
(**b**) S.I. 1976/1043 (N.I. 16); Article 68 was amended by S.I. 1993/2668 (N.I. 11) Article 18(1) and Schedule 5 paragraph 5
(**c**) S.R. 1976 No. 261
(**d**) As inserted by S.I. 1993/2668 (N.I. 11) Article 16(2)
(**e**) As inserted by S.I. 1993/2668 (N.I. 11) Article 16(4) and Schedule 4 paragraph 1(*a*)

Application

3. These Regulations apply to any action taken in relation to the dismissal of an employee which consists of—

(*a*) the presentation by him of a relevant complaint of dismissal; or

(*b*) his making a claim in accordance with a dismissal procedures agreement designated under Article 26 of the No. 1 Order(**a**); or

(*c*) any action taken by the Agency under relevant conciliation powers; or

(*d*) the making of a relevant compromise contract.

Continuity of employment where employee re-engaged

4.—(1) The provisions of this regulation shall have effect to preserve the continuity of a person's period of employment for the purposes of Schedule 1 to the Act of 1965 and for the purposes of that Schedule as applied by Article 68(1) of the No. 1 Order(**b**).

(2) If in consequence of any action to which these Regulations apply a dismissed employee is reinstated or re-engaged by his employer or by a successor or associated employer of the employer the continuity of that employee's period of employment shall be preserved and, accordingly, the period beginning with the date on which the dismissal to which the action relates takes effect and ending with the date of reinstatement or re-engagement, as the case may be, shall count in the computation of the employee's period of continuous employment.

Exclusion of operation of sections 34 and 34A of the Act of 1965 where redundancy or equivalent payment repaid

5.—(1) Where—

(*a*) in consequence of any action to which these Regulations apply a dismissed employee is reinstated or re-engaged by his employer or by a successor or associated employer of the employer; and

(*b*) the terms upon which he is so reinstated or re-engaged include provision for him to repay the amount of a redundancy payment or an equivalent payment paid in respect of the relevant dismissal,

sections 34 and 34A of the Act of 1965(**c**) (which require the continuity of the period of employment to be treated as broken where a redundancy payment or an equivalent payment is paid and he is subsequently re-engaged) shall not apply if that provision is complied with.

(2) For the purposes of this regulation the cases in which a redundancy payment shall be treated as having been paid are cases mentioned in paragraphs (*a*) and (*b*) of section 34(3) of the Act of 1965.

(**a**) As amended by S.I. 1993/2668 (N.I. 11) Article 18(2) and Schedule 6

(**b**) As amended by S.I. 1987/936 (N.I. 9) Article 25(1) and Schedule 3 paragraph 4(14)

(**c**) Section 34A was inserted by S.I. 1976/1043 (N.I. 16) Article 82(1) and Schedule 5 Part II paragraph 24

Sealed with the Official Seal of the Department of Economic Development on 11th January 1994.

(L.S.) *D. Gibson*
Under Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations revoke and replace with additional provisions the Industrial Relations (Continuity of Employment) Regulations (Northern Ireland) 1976 (''the 1976 Regulations''). The 1976 Regulations provided for the preservation of continuity of employment for the purposes of the individual employment rights contained in the Industrial Relations (Northern Ireland) Order 1976 (''the No. 1 Order'') where a dismissed employee was reinstated or re-engaged in consequence of—

(*a*) the presentation of a complaint of unfair dismissal;

(*b*) the making of a claim in accordance with a dismissal procedures agreement designated under Article 26 of the No. 1 Order; or

(*c*) action taken by the Labour Relations Agency under Article 62 of that Order in a dispute relating to an unfair dismissal claim.

The 1976 Regulations also provided that continuity of employment was not broken in redundancy cases where any such employee repaid a redundancy payment or an equivalent payment.

The additional provisions in these Regulations provide for the preservation of continuity of employment for the purposes of the individual employment rights contained in the No. 1 Order where a dismissed employee is reinstated or re-engaged in consequence of the following—

(*a*) the presentation of a complaint under Article 63 of the Sex Discrimination (Northern Ireland) Order 1976 (''the Sex Discrimination Order'') arising out of a dismissal;

(*b*) action taken by the Labour Relations Agency under Article 64(2) of the Sex Discrimination Order; or

(*c*) the making of a compromise contract authorised by—

(i) Article 78(2)(*f*) of the No. 1 Order and relating to a complaint of unfair dismissal; or

(ii) Article 77(4)(*aa*) of the Sex Discrimination Order and relating to a complaint arising out of a dismissal.