
STATUTORY INSTRUMENTS

1992 No. 807

The Industrial Relations (Northern Ireland) Order 1992

PART XI

**MACHINERY FOR PROMOTING
IMPROVEMENT OF INDUSTRIAL RELATIONS**

The Labour Relations Agency

Constitution of the Labour Relations Agency

82.—(1) There shall continue to be a body 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 4, and the supplementary provisions contained in Part II of that Schedule shall have effect with respect to the Agency.

General function of the Agency

83.—(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 and by any other statutory provision.

Functions of the Agency in relation to trade disputes

84.—(1) Where the Agency apprehends that a trade dispute may occur it may take all steps which it considers appropriate for avoiding such trade dispute.

(2) Where a trade dispute exists the Agency may—

- (a) inquire into the causes and circumstances of the trade dispute;
- (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, refer the matter for settlement to the arbitration of—
 - (i) one or more persons appointed by the Agency; or
 - (ii) the Industrial Court;

- (f) at any time, with the agreement of the parties, refer the matter to one or more persons appointed by the Agency to inquire into the matter and report to the Agency thereon;
- (g) if it is satisfied that no appropriate agreed procedures for negotiation or the settlement of disputes exist between the parties, at any time, with the agreement of the parties, refer the dispute to a committee appointed in accordance with paragraph (3) whose function shall be to—
 - (i) inquire into the causes and circumstances of the dispute; and
 - (ii) seek the agreement of the parties to the dispute as to how it may be settled.
- (3) The committee referred to in paragraph (2)(g) shall consist of—
 - (a) a chairman appointed by the Agency; and
 - (b) such equal number of representatives of each party to the trade dispute as the Agency may determine.
- (4) In exercising its functions under paragraph (2)(d), the Agency shall have regard to the desirability of encouraging the parties to a dispute to use any appropriate agreed procedures for negotiation or the settlement of disputes.
- (5) In exercising its functions under paragraph (2)(e), the Agency shall consider the likelihood of the dispute being settled by conciliation and, where there exist appropriate agreed procedures for negotiation or the settlement of disputes, shall not refer a matter for settlement to arbitration under that sub-paragraph unless those procedures have been used and have failed to result in a settlement or unless, in the opinion of the Agency, there is a special reason which justifies arbitration under that sub-paragraph as an alternative to those procedures.
- (6) For the purpose of exercising its powers under paragraph (2)(e)(i) 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.
- (7) Nothing in paragraph (2) prejudices the operation of any other statutory provision conferring on a person or body a power to refer any matter connected with a trade dispute to arbitration or for inquiry or the right of the parties to the dispute to establish at any time appropriate procedures for negotiation or the settlement of disputes.
- (8) The Agency may pay to persons appointed under paragraph (2)(e)(i) or (f) or (3)(a) such fees and such allowances for expenses as the Agency, with the approval of the Department and the Department of Finance and Personnel, may determine.
- (9) The Arbitration Act (Northern Ireland) 1937(1) shall not apply to any arbitration under this Article.

Notification of procedural agreements

85.—(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) In this Article “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) health and safety at work; and
- (k) promotion.

Review of collective bargaining arrangements

86.—(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 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

87.—(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.

(2) The Department may make a grant of such amount as the Department, with the approval of the Department of Finance and Personnel, 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

88.—(1) 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.

(2) The findings of any research under paragraph (1) together with any advice given by the Agency in connection with those findings, may be published by the Agency if—

- (a) it appears to the Agency that publication is desirable for the improvement of industrial relations, either generally or in relation to the specific question into which research was made; and
- (b) after sending a draft of the findings to, and taking into account the views of, all the parties appearing to the Agency to be concerned, the Agency thinks fit.

(3) The Department may make a grant of such amount as the Department, with the approval of the Department of Finance and Personnel, may determine towards defraying the expenses incurred by any undertaking or organisation in connection with—

- (a) the conduct of 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; and
- (b) the giving of advice based on such research.

Industrial relations advice

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

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

(3) The Agency may publish—

- (a) general advice on any matter pertaining to the conduct of industrial relations or employment policies; and
- (b) general information relating to industrial relations or to employment policies.

(4) Where the Agency thinks fit, it may—

- (a) give advice to any employer, employers' association, worker, trade union or other body or person;
- (b) publish general advice; and
- (c) publish general information,

with respect to the rights, duties, liabilities and responsibilities under the law of employers, employers' associations, workers and trade unions.

(5) References in this Article to employment policies are to such policies only in so far as they relate to or are connected with industrial relations.

Codes of Practice

90.—(1) The Agency may issue Codes of Practice containing such practical guidance as the Agency thinks fit for the purpose of promoting the improvement of industrial relations.

(2) Without prejudice to the generality of paragraph (1), the Agency shall, in one or more Codes of Practice, provide practical guidance on the following matters—

- (a) the disclosure of information, in accordance with Articles 39 and 40, by employers to trade union representatives for the purpose of collective bargaining;
- (b) the time off to be permitted by an employer—
 - (i) to a trade union official in accordance with Article 37 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(2), including guidance on the circumstances in which a trade union official is to be permitted to take time off under that Article in respect of duties connected with industrial action; and
 - (ii) to a trade union member in accordance with Article 38 of that Order, including guidance on the question whether, and the circumstances in which, a trade union member is to be permitted to take time off under that Article for trade union activities connected with industrial action.

(3) When the Agency proposes to issue a Code of Practice, it shall prepare and publish a draft of that Code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) If the Agency determines to proceed with the draft, it shall transmit the draft to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(5) In the case of a draft Code of Practice containing practical guidance on the matters referred to in paragraph (2)(a) or (b), if the draft is approved by resolution of the Assembly the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(6) In the case of a draft Code of Practice not containing such practical guidance, if, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(8) If the Agency is of the opinion that the provisions of a Code of Practice to be issued under the preceding provisions of this Article will supersede the whole or part of a Code previously issued by it under this Article or by the Department under Article 95, it shall in the new Code state that on the day on which the new Code comes into effect in pursuance of an order under paragraph (5) or (7) the old Code or a specified part of it shall cease to have effect (subject to any transitional provisions or savings made by the order).

(9) The Agency may from time to time revise the whole or any part of a Code of Practice issued under this Article and issue that revised Code, and, subject to paragraph (10), paragraphs (3) to (7) shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.

(10) A Code of Practice issued under this Article may be revised by the Agency in accordance with paragraphs (11) to (13) for the purpose of bringing it into conformity with statutory provisions coming into operation after the Code was issued by the making of consequential amendments and the omission of obsolete passages.

(11) Where the Agency proposes to revise a Code under paragraph (10), it shall transmit a draft of the revised Code to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(12) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(13) If no such resolution is passed as is referred to in paragraph (12), the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(14) A Code of Practice issued under this Article may be revoked by an order made by the Department; but no such order shall be made—

- (a) except at the request of the Agency; and
- (b) unless a draft of the order has been laid before and approved by resolution of the Assembly.

(15) If the Agency requests the Department to revoke a Code of Practice issued under this Article and the Department decides not to do so, the Department shall publish details of its reasons for withholding approval.

(16) A failure on the part of any person to observe any provision of a Code of Practice issued under this Article shall not of itself render him liable to any proceedings; but in any proceedings before an industrial tribunal or the Industrial Court—

- (a) any such Code shall be admissible in evidence; and
- (b) any provision of the Code which appears to the tribunal or Industrial Court to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

(17) Without prejudice to Article 107(3), an order under paragraph (5), (7), (13) or (14) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the Code of Practice thereby brought into operation or (as the case may be) revoked.

The Industrial Court

Constitution of the Industrial Court

91.—(1) There shall continue to be an Industrial Court which shall consist of—

- (a) an independent president appointed by the Head of the Department; and
- (b) other members appointed by the Head of the Department, being persons appearing to him to be experienced in industrial relations.

(2) The members appointed under paragraph (1)(b) shall include some persons whose experience is as representatives of employers and some persons whose experience is as representatives of workers.

(3) The members of the Court shall hold and vacate office in accordance with their terms of appointment.

(4) The functions of the president may, if he is for any reason unable to act or during any vacancy in his office, be discharged by an independent person nominated for that purpose by the Head of the Department.

(5) The Department shall pay to the members of the Court such remuneration and such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel and may pay to any other persons such allowances as the Department may, with the approval of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at proceedings of the Court.

(6) For the purposes of discharging any of its functions, the Court shall consist of such of the members of the Court as the president may direct.

(7) Where the president sits as a member of the Court he shall be chairman of the Court, and in any other case the chairman of the Court shall be such other member as the Head of the Department may direct.

(8) The functions of the Court shall be performed on behalf of the Crown, but the Court shall not be subject to directions of any kind from any Minister of the Crown or Northern Ireland department as to the manner in which it is to exercise any of its functions.

Procedure of the Industrial Court

92.—(1) The Department may make, or authorise the Industrial Court to make, rules regulating the procedure of the Court and such rules may provide—

- (a) for references in certain cases to a single member of the Court;
- (b) for the Court to sit in two or more divisions;
- (c) for the Court to sit with assessors;
- (d) for the Court, or any division of the Court, to act notwithstanding any vacancy in its number;
- (e) for enabling questions as to the interpretation of any award to be settled without any fresh reference;
- (f) for the cases in which persons may appear by counsel or solicitor in proceedings before the Court.

(2) Except as provided by rules under paragraph (1)(f), no person shall be entitled to appear in any proceedings before the Court by counsel or solicitor.

(3) If in any case the Court cannot reach a unanimous decision on its award, the chairman shall decide the matter acting with the full powers of an umpire.

(4) Where any trade dispute referred to the Court under Article 84(2)(e) involves questions as to wages or as to hours of work or otherwise as to the terms and conditions of or affecting employment which are regulated by any statutory provision, the Court shall not make any award which is inconsistent with that statutory provision.

(5) The Arbitration Act (Northern Ireland) 1937(3) shall not apply to any reference to the Court.

(6) Subject to paragraphs (1) to (5), the Court shall determine its own procedure.

Courts of inquiry

Court of inquiry into trade dispute

93.—(1) Where any trade dispute exists or is apprehended, the Head of the Department may—

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

- (b) if he thinks fit, refer the matters appearing to him to be connected with or relevant to the dispute to a court of inquiry appointed under paragraph (2).
- (2) For the purpose of a reference under paragraph (1)(b), the Head of the Department may appoint a court of inquiry consisting of—
- (a) one person; or
 - (b) a chairman and such other persons as the Head of the Department thinks fit.
- (3) The Department shall pay to the members of a court of inquiry such remuneration and such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel and may pay to any other persons such allowances as the Department may, with the approval of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at proceedings of a court of inquiry.
- (4) A court of inquiry appointed under paragraph (2)(b) may act notwithstanding any vacancy in its number.
- (5) A court of inquiry shall, either in public or in private at its discretion, inquire into the matters referred to it.
- (6) Subject to paragraph (9), a court of inquiry shall report to the Head of the Department on any matters referred to it and may, if it thinks fit, make interim reports.
- (7) Any report of a court of inquiry made to the Head of the Department under paragraph (6) shall be laid before the Assembly.
- (8) Subject to paragraph (9), the Head of the Department may publish, in such manner as he thinks fit, any information obtained or conclusions arrived at by the court of inquiry as a result of or in the course of its inquiry.
- (9) There shall not be included in any report made under paragraph (6) or any publication under paragraph (8) any information obtained by the court of inquiry in the course of its inquiry as to any trade union or employers' association or as to any individual business carried on by a person, firm or business which is not available otherwise than through evidence given at the inquiry, except with the consent of the general secretary of the trade union or employers' association or of the person, firm or company in question.

Procedure of court of inquiry

- 94.**—(1) The Head of the Department may make rules regulating the procedure of a court of inquiry appointed under Article 93 and such rules may provide—
- (a) for the summoning of witnesses;
 - (b) for the quorum of a court of inquiry appointed under Article 93(2)(b);
 - (c) for the appointment of committees;
 - (d) for enabling the court of inquiry to call for such documents as the court may determine to be relevant to the subject matter of the inquiry;
 - (e) for the cases in which persons may appear by counsel or solicitor in proceedings before the court of inquiry.
- (2) Except as provided by rules under paragraph (1)(e), no person shall be entitled to appear in any proceedings before a court of inquiry by counsel or solicitor.
- (3) A court of inquiry may, if and to such extent as may be authorised by rules under this Article, by order require any person who appears to the court to have any knowledge of the subject matter of the inquiry—
- (a) to furnish, in writing or otherwise, such particulars in relation thereto as the court may require; and

(b) where necessary, to attend before the court and give evidence on oath.

(4) A court of inquiry may administer, or authorise any person to administer, an oath for the purposes of paragraph (3)(b).

Issue by Department of Codes of Practice

Issue by Department of Codes of Practice

95.—(1) The Department may issue Codes of Practice containing such practical guidance as the Department thinks fit for the purpose of promoting the improvement of industrial relations or of promoting what appear to it to be desirable practices in relation to the conduct by trade unions of ballots and elections.

(2) The Department shall, after consultation with the Agency, prepare and publish a draft of any Code of Practice that it proposes to issue under this Article.

(3) The Department shall consider any representations made to it about a draft prepared under paragraph (2) and may modify the draft accordingly.

(4) If the Department determines to proceed with the draft the Department shall lay it before the Assembly.

(5) If the draft is approved by resolution of the Assembly, the Department shall issue the Code in the form of the draft and the Code shall come into operation on such day as the Department may by order appoint.

(6) If the Department is of the opinion that the provisions of a Code of Practice to be issued under the preceding provisions of this Article will supersede the whole or part of a Code previously issued by the Department under this Article or by the Agency under Article 90, the Department shall in the new Code state that on the day on which the new Code comes into operation in pursuance of an order under paragraph (5) the old Code or a specified part of it shall cease to have effect (subject to any transitional provisions or savings made by the order).

(7) The Department may from time to time revise the whole or any part of a Code of Practice issued under this Article and issue that revised Code, and, subject to paragraph (8), paragraphs (2) to (5) shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.

(8) A Code of Practice issued under this Article may be revised by the Department in accordance with paragraphs (9) to (11) for the purpose of bringing it into conformity with statutory provisions coming into operation after the Code was issued by the making of consequential amendments and the omission of obsolete passages.

(9) Where the Department proposes to revise a Code under paragraph (8), it shall lay a draft of the revised Code before the Assembly.

(10) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(11) If no such resolution is passed as is referred to in paragraph (10), the Department shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(12) A Code of Practice issued under this Article may be revoked by an order made by the Department; but no such order shall be made unless a draft of the order has been laid before and approved by resolution of the Assembly.

(13) A failure on the part of any person to observe any provision of a Code of Practice issued under this Article shall not of itself render him liable to any proceedings; but in any proceedings before a court or industrial tribunal or the Industrial Court—

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

(14) Without prejudice to Article 107(3), an order under paragraph (5), (11) or (12) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the Code of Practice thereby brought into operation or (as the case may be) revoked.

Meaning of “trade dispute” in Part XI

Meaning of “trade dispute” in Part XI

96.—(1) In this Part “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 Part as a dispute between an 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 Part 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 Part as a dispute to which workers or, as the case may be, employers are parties.

(5) 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.