



2016 CHAPTER 15

PROSPECTIVE

Industrial tribunals

Conciliation before and after institution of proceedings

1.—(1) After Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 insert—

“Requirement to contact Labour Relations Agency before instituting proceedings

20A.—(1) Before a person (“the prospective claimant”) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to the Agency prescribed information, in the prescribed manner, about that matter.

This is subject to paragraph (7).

(2) On receiving the prescribed information in the prescribed manner, the Agency shall send a copy of it to a conciliation officer.

(3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.

(4) If—

(a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or

(b) the prescribed period expires without a settlement having been reached,

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the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.

(5) The conciliation officer may continue to endeavour to promote a settlement after the expiry of the prescribed period.

(6) In paragraphs (3) to (5) “settlement” means a settlement that avoids proceedings being instituted.

(7) A person may institute relevant proceedings without complying with the requirement in paragraph (1) in prescribed cases.

The cases that may be prescribed include (in particular)—

- (a) cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter;
- (b) cases where proceedings that are not relevant proceedings are instituted by means of the same form as proceedings that are;
- (c) cases where Article 20B applies because the Agency has been contacted by a person against whom relevant proceedings are being instituted.

(8) A person who is subject to the requirement in paragraph (1) may not present an application to institute relevant proceedings without a certificate under paragraph (4).

(9) Where a conciliation officer acts under this Article in a case where the prospective claimant has ceased to be employed by the employer and the proposed proceedings are proceedings under Article 145 of the Employment Rights Order, the conciliation officer may in particular—

- (a) seek to promote the reinstatement or re-engagement of the prospective claimant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable, or
- (b) where the prospective claimant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the prospective claimant.

(10) In paragraphs (1) to (7) “prescribed” means prescribed in industrial tribunal procedure regulations.

(11) Industrial tribunal procedure regulations may make such further provision as appears to the Department to be necessary or expedient with respect to the conciliation process provided for by paragraphs (1) to (8).

(12) Industrial tribunal procedure regulations may (in particular) make provision—

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- (a) authorising the Department to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of providing information to the Agency under paragraph (1) or issuing a certificate under paragraph (4);
- (b) requiring the Agency to give a person any necessary assistance to comply with the requirement in paragraph (1);
- (c) for the extension of the period prescribed for the purposes of paragraph (3);
- (d) treating the requirement in paragraph (1) as complied with, for the purposes of any provision extending the time limit for instituting relevant proceedings, by a person who is relieved of that requirement by virtue of paragraph (7)(a).

Conciliation before institution of proceedings: other Agency duties

20B.—(1) This Article applies where—

- (a) a person contacts the Agency requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to relevant proceedings against that person, and
- (b) the Agency has not received information from the prospective claimant under Article 20A(1).

(2) This Article also applies where—

- (a) a person contacts the Agency requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to relevant proceedings by that person, and
- (b) the requirement in Article 20A(1) would apply to that person but for Article 20A(7).

(3) Where this Article applies a conciliation officer shall endeavour to promote a settlement between the persons who would be parties to the proceedings.

(4) If at any time—

- (a) the conciliation officer concludes that a settlement is not possible, or
- (b) a conciliation officer comes under the duty in Article 20A(3) to promote a settlement between the persons who would be parties to the proceedings,

the duty in paragraph (3) ceases to apply at that time.

(5) In paragraphs (3) and (4) “settlement” means a settlement that avoids proceedings being instituted.

(6) Paragraph (9) of Article 20A applies for the purposes of this Article as it applies for the purposes of that Article.

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Conciliation after institution of proceedings

20C.—(1) Where an application instituting relevant proceedings has been presented to an industrial tribunal, and a copy of it has been sent to a conciliation officer, the conciliation officer shall endeavour to promote a settlement—

- (a) if requested to do so by the person by whom and the person against whom the proceedings are brought, or
- (b) if, in the absence of any such request, the conciliation officer considers that the officer could act under this Article with a reasonable prospect of success.

(2) Where a person who has presented a complaint to an industrial tribunal under Article 145 of the Employment Rights Order has ceased to be employed by the employer against whom the complaint was made, the conciliation officer may in particular—

- (a) 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 conciliation officer to be equitable, or
- (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 conciliation officer to act, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.

(3) In paragraph (1) “settlement” means a settlement that brings proceedings to an end without their being determined by an industrial tribunal.”

(2) Schedule 1 (conciliation: minor and consequential amendments) shall have effect.

Extension of limitation periods to allow conciliation

2. Schedule 2 (extension of limitation periods to allow for conciliation) shall have effect.

Extended power to define “relevant proceedings” for conciliation purposes

3.—(1) Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation) is amended as follows.

(2) In paragraph (8) (power to amend list in paragraph (1) of Article 20), for sub-paragraphs (a) and (b) substitute “ amend the definition of “relevant proceedings” in paragraph (1) by adding to or removing from the list in that paragraph particular types of industrial tribunal proceedings. ”.

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(3) After paragraph (8) insert—

“(8A) An order under paragraph (8) that adds industrial tribunal proceedings to the list in paragraph (1) may amend any statutory provision so as to extend the time limit for instituting those proceedings in such a way as appears necessary or expedient in order to facilitate the conciliation process provided for by Article 20A.

(8B) An order under paragraph (8) that removes industrial tribunal proceedings from the list in paragraph (1) may—

- (a) repeal or revoke any statutory provision that, for the purpose mentioned in paragraph (8A), extends the time limit for instituting those proceedings;
- (b) make further amendments which are consequential on that repeal or revocation.”.

Power to require party to proceedings to pay deposit

4.—(1) Article 11 of the Industrial Tribunals (Northern Ireland) Order 1996 (pre-hearing reviews and preliminary matters), in paragraph (2)(a) (power to require party to proceedings to pay deposit)—

- (a) omit “, if he wishes to continue to participate in those proceedings,”;
- (b) after “£500” add “ as a condition of continuing to participate in those proceedings or doing such other thing as may be prescribed in the regulations ”.

(2) In Article 25 of that Order (regulations and orders)—

- (a) in paragraph (1), for “All” substitute “ Subject to paragraph (1A), all ”;
- (b) after paragraph (1) insert—

“(1A) Regulations which include provision under Article 11(2)(a) shall not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.”.

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