

STATUTORY INSTRUMENTS

1998 No. 3162

**The Fair Employment and Treatment
(Northern Ireland) Order 1998**

PART IX

THE FAIR EMPLOYMENT TRIBUNAL

Other methods of dispute resolution

Conciliation

88.—^{F1}(1)

(1A) ^{F2}.....

^{F1}(2)

(3) In proceeding under [^{F3}any of Articles 88ZA to 88ZC], the Agency shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

(4) Anything communicated to the Agency in connection with the performance of its functions under this Article [^{F4}or any of Articles 88ZA to 88ZC] shall not be admissible in evidence in any proceedings before the Tribunal except with the consent of the person who communicated it to the Agency.

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| F1 | Art. 88(1)(2) repealed (27.1.2020) by Employment Act (Northern Ireland) 2016 (c. 15), ss. 5(3)(b)(i), 29(2), Sch. 3 ; S.R. 2020/1, art. 2(d)(o) |
| F2 | Art. 88(1A) repealed (3.4.2011) by Employment Act (Northern Ireland) 2011 (c. 13), ss. 13, 16, 17(1), Sch. 4 ; S.R. 2011/159, art. 2 |
| F3 | Words in art. 88(3) substituted (27.1.2020) by Employment Act (Northern Ireland) 2016 (c. 15), ss. 5(3)(b)(ii), 29(2) ; S.R. 2020/1, art. 2(d) |
| F4 | Words in art. 88(4) inserted (27.1.2020) by Employment Act (Northern Ireland) 2016 (c. 15), ss. 5(3)(iii), 29(2) ; S.R. 2020/1, art. 2(d) |

[^{F5}Requirement to contact Labour Relations Agency before complaint to Tribunal

88ZA.—(1) Subject to paragraph (7), before a person (“the prospective complainant”) presents a complaint to the Tribunal under Article 38 relating to any matter, the prospective complainant must provide to the Agency prescribed information, in the prescribed manner, about that matter.

(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 the complainant and the respondent if a complaint were presented to the Tribunal under Article 38.

(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,

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

(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 a complaint being presented to the Tribunal under Article 38.

(7) A person may present a complaint to the Tribunal under Article 38 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 presenting a complaint to the Tribunal under Article 38 relating to the same matter;

(b) cases where prescribed proceedings are instituted by means of the same form as the complaint;

(c) cases where Article 88ZB applies because the Agency has been contacted by a person who is the respondent on a complaint presented to the Tribunal under Article 38.

(8) A person who is subject to the requirement in paragraph (1) may not present a complaint to the Tribunal under Article 38 without a certificate under paragraph (4).

(9) In paragraphs (1) to (7) “prescribed” means prescribed in regulations under Article 84.

(10) Regulations under Article 84 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).

(11) Regulations under Article 84 may (in particular) make provision—

(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 presenting a complaint to the Tribunal under Article 38, by a person who is relieved of that requirement by virtue of paragraph (7)(a).

F5 Arts. 88ZA-88ZC inserted (27.1.2020) by *Employment Act (Northern Ireland) 2016* (c. 15), ss. 5(2), 29(2); S.R. 2020/1, art. 2(d)

Conciliation before complaint to Tribunal: other Labour Relations Agency duties

88ZB.—(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 a complaint being presented to the Tribunal under Article 38 against that person, and
 - (b) the Agency has not received information from the prospective complainant under Article 88ZA(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 a complaint being presented to the Tribunal under Article 38 by that person, and
 - (b) the requirement in Article 88ZA(1) would apply to that person but for Article 88ZA(7).
- (3) Where this Article applies a conciliation officer shall endeavour to promote a settlement between the persons who would be the complainant and the respondent if a complaint were presented to the Tribunal under Article 38.
- (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 88ZA(3) to promote a settlement between the persons who would be the complainant and the respondent,
- the duty in paragraph (3) ceases to apply at that time.
- (5) In paragraphs (3) and (4) “settlement” means a settlement that avoids a complaint being presented to the Tribunal under Article 38.

F5 Arts. 88ZA-88ZC inserted (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 5\(2\), 29\(2\)](#); S.R. 2020/1, art. 2(d)

Conciliation after complaint presented

88ZC Where a complaint has been presented to the Tribunal under Article 38, the Tribunal shall send a copy of the complaint to the Agency and it shall be the duty of the Agency—

- (a) if it is requested to do so by both the complainant and the respondent; or
- (b) if, in the absence of any such request, the Agency considers that it could act under this Article with a reasonable prospect of success,

to endeavour to promote a settlement of the complaint without its being determined by the Tribunal.]

F5 Arts. 88ZA-88ZC inserted (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), ss. 5\(2\), 29\(2\)](#); S.R. 2020/1, art. 2(d)

[^{F6}Conciliation: recovery of sums payable under compromises

88A.—(1) Paragraphs (3) to (6) apply if—

- (a) the Agency—
 - (i) has taken action under [^{F7}any of Articles 88ZA to 88ZC] in a case, and
 - (ii) issues a certificate in writing stating that a compromise has been reached in the case, and
- (b) all of the terms of the compromise are set out—

- (i) in a single relevant document, or
 - (ii) in a combination of two or more relevant documents.
- (2) A document is a “relevant document” for the purposes of paragraph (1) if—
- (a) it is the certificate, or
 - (b) it is a document that is referred to in the certificate or that is referred to in a document that is within this sub-paragraph.
- (3) Any sum payable by a person under the terms of the compromise (a “compromise sum”) shall, subject to paragraphs (4) to (7), be recoverable as if the sum were payable under an order of the Tribunal.
- (4) A compromise sum is not recoverable under paragraph (3) if—
- (a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from him under the general law of contract, and
 - (b) that declaration is made.
- (5) If county court rules so provide, a compromise sum is not recoverable under paragraph (3) during the period—
- (a) beginning with the issue of the certificate, and
 - (b) ending at such time as may be specified in, or determined under, county court rules.
- (6) If the terms of the compromise provide for the person to whom a compromise sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by him under paragraph (3) only if a county court so orders.
- (7) Once an application has been made for a declaration under paragraph (4) in relation to a sum, no further reliance may be placed on paragraph (3) for the recovery of the sum while the application is pending.
- (8) An application for a declaration under paragraph (4) may be made to the Tribunal or a county court.
- (9) Regulations under Article 84 may (in particular) make provision as to the time within which an application to the Tribunal for a declaration under paragraph (4) is to be made.
- (10) County court rules may make provision as to—
- (a) the time within which an application to a county court for a declaration under paragraph (4) is to be made;
 - (b) when an application (whether made to a county court or the Tribunal) for a declaration under paragraph (4) is pending for the purposes of paragraph (7).
- (11) Nothing in this Article shall be taken to prejudice any rights or remedies that a person has apart from this Article.
- (12) In this Article “compromise” (except in the phrase “compromise sum”) means a settlement, or compromise, to avoid proceedings or bring proceedings to an end.]

F6 Art. 88A inserted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), **ss. 14**, 17(1); S.R. 2011/159, **art. 2**

F7 Words in [art. 88A\(1\)\(a\)\(i\)](#) substituted (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\)](#), **ss. 5(3)(c)**, 29(2); S.R. 2020/1, **art. 2(d)**

Labour Relations Agency arbitration scheme

89.—(1) The Agency may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before the Tribunal.

(2) When the Agency has prepared such a scheme it shall submit a draft of the scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the scheme; and
- (b) making provision for it to come into effect.

(3) The Agency may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the revised scheme; and
- (b) making provision for it to come into effect.

(4) The Agency may take any steps appropriate for promoting awareness of a scheme prepared under this Article.

(5) Where the parties to any dispute within paragraph (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this Article, the Agency shall refer the dispute to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).

(6) Nothing in the Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this Article except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.

Changes to legislation:

There are currently no known outstanding effects for the The Fair Employment and Treatment (Northern Ireland) Order 1998, Cross Heading: Other methods of dispute resolution.