
STATUTORY INSTRUMENTS

1999 No. 2790

The Employment Relations (Northern Ireland) Order 1999

Other rights of individuals

Unfair dismissal of striking workers

18. Schedule 5 shall have effect.

Collective agreements: detriment and dismissal

19.—(1) The Department may make regulations about cases where a worker—

- (a) is subjected to detriment by his employer, or
- (b) is dismissed,

on the grounds that he refuses to enter into a contract which includes terms which differ from the terms of a collective agreement which applies to him.

(2) The regulations may make provision which applies only in specified classes of case.

(3) In this Article—

“collective agreement” has the meaning given by Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992;

“employer” and “worker” have the same meaning as in Article 2(2) of the Trade Union and Labour Relations Order.

(4) The payment of higher wages or higher rates of pay or overtime or the payment of any signing on or other bonuses or the provision of other benefits having a monetary value to other workers employed by the same employer shall not constitute a detriment to any worker not receiving the same or similar payments or benefits within the meaning of paragraph (1)(a) so long as—

- (a) there is no inhibition in the contract of employment of the worker receiving the same from being the member of any trade union, and
- (b) the said payments of higher wages or rates of pay or overtime or bonuses or the provision of other benefits are in accordance with the terms of a contract of employment and reasonably relate to services provided by the worker under that contract.

Agreement to exclude dismissal rights

20.—(1) In Article 240 of the Employment Rights Order (fixed-term contracts) paragraph (1) (agreement to exclude unfair dismissal provisions) shall be omitted; and paragraphs (2) to (5) shall have effect in consequence.

(2) In Articles 68(4), 69(2), 70(2), 70A(2) and 70B(2) of that Order—

- (a) the words from the beginning to “the dismissal,” shall be omitted, and
- (b) for “that Part” there shall be substituted “Part XI”.

(3) In Article 68A(4) of that Order the words from “, unless” to the end shall be omitted.

(4) In Schedule 2 to the Shops (Sunday Trading &.) (Northern Ireland) Order 1997, paragraph 11(5) shall be omitted.

(5) In—

(a) section 23(4) of the National Minimum Wage Act 1998; and

(b) paragraph 1(3) of Schedule 3 to the Tax Credits Act 1999,

the words from “except” to the end shall be omitted.

(6) Article 240(1) of the Employment Rights Order does not prevent Part XI of that Order from applying to a dismissal which is regarded as unfair by virtue of Article 131 or 135 of that Order (pregnancy and childbirth, and assertion of statutory right).

Part-time work: discrimination

21.—(1) The Department shall make regulations for the purpose of securing that persons in part-time employment are treated, for such purposes and to such extent as the regulations may specify, no less favourably than persons in full-time employment.

(2) The regulations may—

(a) specify classes of person who are to be taken to be, or not to be, in part-time employment;

(b) specify classes of person who are to be taken to be, or not to be, in full-time employment;

(c) specify circumstances in which persons in part-time employment are to be taken to be, or not to be, treated less favourably than persons in full-time employment;

(d) make provision which has effect in relation to persons in part-time employment generally or provision which has effect only in relation to specified classes of persons in part-time employment.

(3) The regulations may—

(a) confer jurisdiction (including exclusive jurisdiction) on industrial tribunals;

(b) create criminal offences in relation to specified acts or omissions by an employer, by an organisation of employers, by an organisation of workers or by an organisation existing for the purposes of a profession or trade carried on by the organisation’s members;

(c) in specified cases or circumstances, extend liability for a criminal offence created under sub-paragraph (b) to a person who aids the commission of the offence or to a person who is an agent, principal, employee, employer or officer of a person who commits the offence;

(d) provide for specified obligations or offences not to apply in specified circumstances;

(e) make provision about notices or information to be given, evidence to be produced and other procedures to be followed;

(f) amend, apply with or without modifications, or make provision similar to any provision of the Employment Rights Order (including, in particular, Parts VI, XI and XV) or the Trade Union and Labour Relations Order;

(g) provide for the provisions of specified agreements to have effect in place of provisions of the regulations to such extent and in such circumstances as may be specified;

(h) include consequential provision, including provision amending a statutory provision.

(4) Without prejudice to the generality of this Article the regulations may make any provision which appears to the Department to be necessary or expedient—

(a) for the purpose of implementing Council Directive [97/81/EC](#) on the framework agreement on part-time work in its application to terms and conditions of employment;

(b) for the purpose of dealing with any matter arising out of or related to the United Kingdom’s obligations under that Directive;

- (c) for the purpose of any matter dealt with by the framework agreement or for the purpose of applying the provisions of the framework agreement to any matter relating to part-time workers.
- (5) Regulations under this Article which create an offence—
 - (a) shall provide for it to be triable summarily only, and
 - (b) may not provide for it to be punishable by imprisonment or by a fine in excess of level 5 on the standard scale.

Part-time work: code of practice

- 22.**—(1) The Department may issue codes of practice containing guidance for the purpose of—
- (a) eliminating discrimination in the field of employment against part-time workers;
 - (b) facilitating the development of opportunities for part-time work;
 - (c) facilitating the flexible organisation of working time taking into account the needs of workers and employers;
 - (d) any matter dealt with in the framework agreement on part-time work annexed to Council Directive 97/81/EC.
- (2) The Department may revise a code and issue the whole or part of the revised code.
- (3) A person's failure to observe a provision of a code does not make him liable to any proceedings.
- (4) A code—
- (a) is admissible in evidence in proceedings before an industrial tribunal, and
 - (b) shall be taken into account by an industrial tribunal in any case in which it appears to the tribunal to be relevant.

Code of practice: supplemental

- 23.**—(1) Before issuing or revising a code of practice under Article 22 the Department shall consult such persons as it considers appropriate.
- (2) Before issuing a code the Department shall—
- (a) publish a draft code,
 - (b) consider any representations made to it about the draft,
 - (c) if the Department thinks it appropriate, modify the draft in the light of any representations made to it.
- (3) If, having followed the procedure under paragraph (2), the Department decides to issue a code, the Department shall lay a draft code before the Assembly.
- (4) If the draft code is approved by resolution of the Assembly, the Department shall issue the code in the form of the draft.
- (5) In this Article and Article 22(3) and (4)—
- (a) a reference to a code includes a reference to a revised code,
 - (b) a reference to a draft code includes a reference to a draft revision, and
 - (c) a reference to issuing a code includes a reference to issuing part of a revised code.

Power to confer rights on individuals

24.—(1) This Article applies to any right conferred on an individual against an employer (however defined) under any of the following—

- (a) the Industrial Relations (Northern Ireland) Order 1992;
- (b) the Trade Union and Labour Relations Order;
- (c) the Employment Rights Order;
- (d) the Shops (Sunday Trading &.) (Northern Ireland) Order 1997;
- (e) this Order;
- (f) any instrument made under section 2(2) of the European Communities Act 1972.

(2) The Department may by order make provision which has the effect of conferring any such right on individuals who are of a specified description.

(3) The reference in paragraph (2) to individuals includes a reference to individuals expressly excluded from exercising the right.

(4) An order under this Article may—

- (a) provide that individuals are to be treated as parties to workers' contracts or contracts of employment;
- (b) make provision as to who are to be regarded as the employers of individuals;
- (c) make provision which has the effect of modifying the operation of any right as conferred on individuals by the order;
- (d) include such consequential provisions as the Department thinks fit.

(5) An order under this Article may make provision in such way as the Department thinks fit, whether by amending statutory provisions or otherwise.

(6) Article 250(4) of the Employment Rights Order (which is superseded by this Article) shall be omitted.

(7) Any order made or having effect as if made under Article 250(4), so far as effective immediately before the coming into operation of this Article, shall have effect as if made under this Article.