

THE EMPLOYMENT (NORTHERN IRELAND) ORDER 2003

S.I. 2003 No. 2902 (N.I. 15)

EXPLANATORY MEMORANDUM

COMMENTARY ON PROVISIONS

Article 8: Costs, expenses and allowances

Article 8 extends the scope of Article 15 of ITO by substituting a new paragraph (1) specifying that regulations may provide for the award of costs or expenses or allowances. This provision enables the Department to empower industrial tribunals to award costs against a representative. In its application, it is intended that this provision will deter vexatious or abusive behaviour on the part of paid representatives only. It could mean that the representative may not recover fees from the client, or may be required to pay costs incurred by the client or the other party to the case. It is intended that regulations will include safeguards to allow the representative the opportunity to put a case on any proposed award. Regulations will also be able to define “representative” so as to exclude the ‘not-for-profit’ sector from wasted costs orders.

By inserting a new Article 15A in ITO through Article 8(2) of the Order, the Department will be empowered by regulations to authorise a tribunal to order one party to pay costs in respect of the time spent by the other party in preparing a case. It is not intended that the parties should have to provide detailed evidence of the actual time they have spent preparing for a case, but that the tribunal should make an assessment based on guidelines to be set out in industrial tribunal Rules of Procedure. It is intended that the new awards could be made only in the circumstances in which a costs award may be made at present, that is, where the party’s case is misconceived, or they or their representative have behaved vexatiously, abusively, disruptively or otherwise unreasonably. The new ITO Article 15A provides that the regulations on costs and preparation time must include a provision that the tribunal may not make an award of both costs and preparation time in favour of the same person in the same proceeding.

Specific powers are included for the procedure regulations to allow tribunals to take into account a party’s ability to pay when making a costs or preparation time award. It is intended that this will enable the tribunal to exercise discretion in considering a party’s means, where appropriate. This will be given effect in the regulations.