
STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART III

FAIR EMPLOYMENT TRIBUNAL REFORM

Power to delegate prescription of forms, etc.

9.—(1) In Article 84 of the Fair Employment and Treatment Order (regulations as to procedure of Fair Employment Tribunal), after paragraph (2) there shall be inserted—

“(2A) The regulations may—

- (a) authorise 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 instituting, or entering an appearance to, proceedings before the Tribunal;
- (b) authorise the Department to prescribe requirements in relation to documents to be supplied with any such form, and
- (c) make provision about the publication of anything prescribed under authority conferred by virtue of this paragraph.”.

(2) In Article 84(2) of that Order, sub-paragraph (g) (forms for complaints under Article 38) shall cease to have effect.

Determination without a hearing

10.—(1) In Article 84 of the Fair Employment and Treatment Order (regulations as to procedure of Fair Employment Tribunal), after paragraph (2A) (inserted by Article 9) there shall be inserted—

“(2B) The regulations may authorise the determination of proceedings without any hearing in such circumstances as the regulations may prescribe.”.

(2) In Article 84(9) of that Order after sub-paragraph (b) there shall be inserted—

- “(c) any requirement imposed by virtue of regulations under this Article to give written answers for the purpose of facilitating the determination of proceedings as mentioned in paragraph (2B).”.

Conciliation

11.—(1) In Article 84 of the Fair Employment and Treatment Order (regulations as to procedure of Fair Employment Tribunal), for paragraph (4) there shall be substituted—

“(4) In relation to proceedings on a complaint under Article 38 the regulations may include provision for postponing fixing a time and place for a hearing, or postponing a time fixed for a hearing, for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn.”.

(2) In Article 88 of that Order (conciliation), after paragraph (1) there shall be inserted—

“(1A) Where regulations under Article 84 include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn—

- (a) paragraph (1) shall have effect from the end of the postponement to confer a power on the Agency, instead of imposing a duty; and
- (b) the regulations shall also include provision for the parties to proceedings to which the provision for postponement applies to be notified that the services of the Agency may no longer be available to them after the end of the postponement.”.

Practice directions

12. After Article 84 of the Fair Employment and Treatment Order there shall be inserted—

“Practice directions

84A.—(1) Regulations under Article 84 may include provision—

- (a) enabling the President to make directions about the procedure of the Tribunal, including directions about the exercise by the Tribunal of powers under such regulations;
- (b) for securing compliance with such directions; and
- (c) about the publication of such directions.

(2) The regulations may, instead of providing for any matter, refer to provision made or to be made about that matter by directions made by the President.”.

Pre-hearing reviews and preliminary matters

13.—(1) After Article 84A of the Fair Employment and Treatment Order (inserted by Article 12) there shall be inserted—

“Pre-hearing reviews and preliminary matters

84B.—(1) Regulations under Article 84 may include provision—

- (a) for authorising the Tribunal to carry out a review of any proceedings before it at any time before a hearing held for the purpose of determining them (a “pre-hearing review”);
- (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the regulations.

(2) Such regulations may in particular include provision—

- (a) for authorising the Tribunal carrying out a pre-hearing review under the regulations to make, in circumstances specified in the regulations, an order requiring a party to the proceedings in question, if he wishes to continue to participate in those proceedings, to pay a deposit of an amount not exceeding £150; and
- (b) for prescribing—
 - (i) the manner in which the amount of any such deposit is to be determined in any particular case;
 - (ii) the consequences of non-payment of any such deposit; and
 - (iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it or be paid over to another party to the proceedings.

(3) Regulations under paragraph (1)(b), so far as relating to striking out, may not provide for striking out on a ground which does not apply outside a pre-hearing review.

(4) The Department may by order substitute for the sum specified in paragraph (2)(a) such other sum as is specified in the order.

(5) The regulations may also include provision for authorising the Tribunal to hear and determine separately any preliminary issue of a description prescribed by the regulations which is raised in any case.”.

(2) In Article 84(2) of that Order, sub-paragraph (f) (officer of Tribunal to determine matters arising prior to a hearing) shall cease to have effect.

Costs and allowances

14.—(1) After Article 85 of the Fair Employment and Treatment Order there shall be inserted the following Articles—

“Costs and expenses

85A.—(1) Regulations under Article 84 may include provision—

- (a) for the award of costs;
- (b) for the award of any allowances payable under Article 83(2).

(2) Regulations under paragraph (1) may include provision authorising the Tribunal to have regard to a person’s ability to pay when considering the making of an award against him under such regulations.

(3) The regulations may include provision for authorising the Tribunal—

- (a) to disallow all or part of the costs of a representative of a party to proceedings before it by reason of that representative’s conduct of the proceedings;
- (b) to order a representative of a party to proceedings before it to meet all or part of the costs incurred by a party by reason of the representative’s conduct of the proceedings;
- (c) to order a representative of a party to proceedings before it to meet all or part of any allowances payable by the Department under Article 83(2) by reason of the representative’s conduct of the proceedings.

(4) The regulations may also include provision for taxing or otherwise settling the costs referred to in paragraph (1)(a) or (3)(b) (and, in particular for enabling such costs to be taxed in the county court).

Payments in respect of preparation time

85B.—(1) Regulations under Article 84 may include provision for authorising the Tribunal to order a party to proceedings before it to make a payment to any other party in respect of time spent in preparing that other party’s case.

(2) Regulations under paragraph (1) may include provision authorising the Tribunal to have regard to a person’s ability to pay when considering the making of an order against him under such regulations.

(3) If regulations under Article 84 include—

- (a) provision of the kind mentioned in paragraph (1); and
- (b) provision of the kind mentioned in Article 85A(1)(a),

they shall also include provision to prevent the Tribunal exercising its powers under both kinds of provision in favour of the same person in the same proceedings.”.

(2) In Article 84(2) of that Order, sub-paragraphs (i) and (j) (costs and taxing of costs) shall cease to have effect.