
STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART IV

DISPUTE RESOLUTION, ETC.

Statutory procedures

Statutory dispute resolution procedures

- 15.**—(1) Schedule 1 (which sets out the statutory dispute resolution procedures) shall have effect.
- (2) The Department may by order—
- (a) amend Schedule 1;
 - (b) make provision for that Schedule to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of the Schedule were an employee for those purposes; and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.
- (3) Before making an order under this Article, the Department shall consult the Labour Relations Agency.

Contracts of employment

16.—(1) Every contract of employment shall have effect to require the employer and employee to comply, in relation to any matter to which a statutory procedure applies, with the requirements of the procedure.

(2) Paragraph (1) shall have effect notwithstanding any agreement to the contrary, but does not affect so much of an agreement to follow a particular procedure as requires the employer or employee to comply with a requirement which is additional to, and not inconsistent with, the requirements of the statutory procedure.

(3) The Department may for the purpose of this Article by regulations make provision about the application of the statutory procedures.

(4) In this Article, "contract of employment" has the same meaning as in the Employment Rights Order.

Non-completion of statutory procedure: adjustment of awards by industrial tribunals

17.—(1) This Article applies to proceedings before an industrial tribunal relating to a claim under any of the jurisdictions listed in Schedule 2 by an employee.

(2) If, in the case of proceedings to which this Article applies, it appears to the industrial tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employee—
 - (i) to comply with a requirement of the procedure, or
 - (ii) to exercise a right of appeal under it,

it shall, subject to paragraph (4), reduce any award which it makes to the employee by 10 per cent, and may, if it considers it just and equitable in all the circumstances to do so, reduce it by a further amount, but not so as to make a total reduction of more than 50 per cent.

(3) If, in the case of proceedings to which this Article applies, it appears to the industrial tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employer to comply with a requirement of the procedure,

it shall, subject to paragraph (4), increase any award which it makes to the employee by 10 per cent and may, if it considers it just and equitable in all the circumstances to do so, increase it by a further amount, but not so as to make a total increase of more than 50 per cent.

(4) The duty under paragraph (2) or (3) to make a reduction or increase of 10 per cent does not apply if there are exceptional circumstances which would make a reduction or increase of that percentage unjust or inequitable, in which case the tribunal may make no reduction or increase or a reduction or increase of such lesser percentage as it considers just and equitable in all the circumstances.

(5) Where an award falls to be adjusted under this Article and under Article 27, the adjustment under this Article shall be made before the adjustment under that Article.

- (6) The Department may for the purposes of this Article by regulations—
 - (a) make provision about the application of the statutory procedures;
 - (b) make provision about when a statutory procedure is to be taken to be completed;
 - (c) make provision about what constitutes compliance with a requirement of a statutory procedure;
 - (d) make provision about circumstances in which a person is to be treated as not subject to, or as having complied with, such a requirement;
 - (e) make provision for a statutory procedure to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified;
 - (f) make provision about when an employee is required to exercise a right of appeal under a statutory procedure.

- (7) The Department may by order—
 - (a) amend Schedule 2 for the purpose of—
 - (i) adding a jurisdiction to the list in that Schedule, or
 - (ii) removing a jurisdiction from that list;
 - (b) make provision, in relation to a jurisdiction listed in Schedule 2, for this Article not to apply to proceedings relating to claims of a description specified in the order;

- (c) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual’s employer for those purposes.

Non-completion of statutory procedure: adjustment of awards by Fair Employment Tribunal

18.—(1) This Article applies to proceedings before the Fair Employment Tribunal relating to a complaint by an employee under Article 38 of the Fair Employment and Treatment Order.

(2) If, in the case of proceedings to which this Article applies, it appears to the Fair Employment Tribunal that—

- (a) the complaint concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employee—
 - (i) to comply with a requirement of the procedure, or
 - (ii) to exercise a right of appeal under it,

it shall, subject to paragraph (4), reduce any award of compensation which it makes to the employee by 10 per cent, and may, if it considers it just and equitable in all the circumstances to do so, reduce it by a further amount, but not so as to make a total reduction of more than 50 per cent.

(3) If, in the case of proceedings to which this Article applies, it appears to the Fair Employment Tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employer to comply with a requirement of the procedure,

it shall, subject to paragraph (4), increase any award which it makes to the employee by 10 per cent and may, if it considers it just and equitable in all the circumstances to do so, increase it by a further amount, but not so as to make a total increase of more than 50 per cent.

(4) The duty under paragraph (2) or (3) to make a reduction or increase of 10 per cent does not apply if there are exceptional circumstances which would make a reduction or increase of that percentage unjust or inequitable, in which case the Fair Employment Tribunal may make no reduction or increase or a reduction or increase of such lesser percentage as it considers just and equitable in all the circumstances.

(5) Where an award falls to be adjusted under this Article and under Article 28, the adjustment under this Article shall be made before the adjustment under that Article.

(6) The Department may for the purposes of this Article by regulations—

- (a) make provision about the application of the statutory procedures;
- (b) make provision about when a statutory procedure is to be taken to be completed;
- (c) make provision about what constitutes compliance with a requirement of a statutory procedure;

- (d) make provision about circumstances in which a person is to be treated as not subject to, or as having complied with, such a requirement;
 - (e) make provision for a statutory procedure to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified;
 - (f) make provision about when an employee is required to exercise a right of appeal under a statutory procedure.
- (7) The Department may by order—
- (a) make provision for this Article not to apply to proceedings relating to a complaint under Article 38 of the Fair Employment and Treatment Order of a description specified in the order;
 - (b) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

Complaints about grievances: industrial tribunals

- 19.—(1) This Article applies to the jurisdictions listed in Schedule 3.
- (2) An employee shall not present a complaint to an industrial tribunal under a jurisdiction to which this Article applies if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 applies, and
 - (b) the requirement has not been complied with.
- (3) An employee shall not present a complaint to an industrial tribunal under a jurisdiction to which this Article applies if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 has been complied with, and
 - (b) less than 28 days have passed since the day on which the requirement was complied with.
- (4) An employee shall not present a complaint to an industrial tribunal under a jurisdiction to which this Article applies if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 has been complied with, and
 - (b) the day on which the requirement was complied with was more than one month after the end of the original time limit for making the complaint.
- (5) In such circumstances as the Department may specify by regulations, an industrial tribunal may direct that paragraph (4) shall not apply in relation to a particular matter.
- (6) An industrial tribunal shall be prevented from considering a complaint presented in breach of paragraphs (2) to (4), but only if—
- (a) the breach is apparent to the tribunal from the information supplied to it by the employee in connection with the bringing of the proceedings, or
 - (b) the tribunal is satisfied of the breach as a result of his employer raising the issue of compliance with those provisions in accordance with regulations under Article 9 of the Industrial Tribunals Order (industrial tribunal procedure regulations).
- (7) The Department may for the purposes of this Article by regulations—
- (a) make provision about the application of the procedures set out in Part II of Schedule 1;

- (b) make provision about what constitutes compliance with paragraph 6 or 9 of that Schedule;
 - (c) make provision about circumstances in which a person is to be treated as having complied with paragraph 6 or 9 of that Schedule;
 - (d) make provision for paragraph 6 or 9 of that Schedule to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified.
- (8) The Department may by order—
- (a) amend, repeal or replace any of paragraphs (2) to (4);
 - (b) amend Schedule 3;
 - (c) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.
- (9) Before making an order under paragraph (8)(a), the Department shall consult the Labour Relations Agency.
- (10) In its application to orders under paragraph (8)(a), Article 34(1) includes power to amend this Article.

Complaints about grievances: Fair Employment Tribunal

- 20.**—(1) An employee shall not present a complaint to the Fair Employment Tribunal under Article 38 of the Fair Employment and Treatment Order if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 applies, and
 - (b) the requirement has not been complied with.
- (2) An employee shall not present such a complaint if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 has been complied with, and
 - (b) less than 28 days have passed since the day on which the requirement was complied with.
- (3) An employee shall not present such a complaint if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 has been complied with, and
 - (b) the day on which the requirement was complied with was more than one month after the end of the original time limit for making the complaint.
- (4) In such circumstances as the Department may specify by regulations, the Fair Employment Tribunal may direct that paragraph (3) shall not apply in relation to a particular matter.
- (5) The Fair Employment Tribunal shall be prevented from considering a complaint presented in breach of paragraphs (1) to (3), but only if—
- (a) the breach is apparent to the Tribunal from the information supplied to it by the employee in connection with the bringing of the proceedings, or
 - (b) the Tribunal is satisfied of the breach as a result of his employer raising the issue of compliance with those provisions in accordance with regulations under Article 84 of the Fair Employment and Treatment Order (procedure regulations).
- (6) The Department may for the purposes of this Article by regulations—
- (a) make provision about the application of the procedures set out in Part II of Schedule 1;

- (b) make provision about what constitutes compliance with paragraph 6 or 9 of that Schedule;
 - (c) make provision about circumstances in which a person is to be treated as having complied with paragraph 6 or 9 of that Schedule;
 - (d) make provision for paragraph 6 or 9 of that Schedule to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified.
- (7) The Department may by order—
- (a) amend, repeal or replace any of paragraphs (1) to (3);
 - (b) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.
- (8) Before making an order under paragraph (7)(a), the Department shall consult the Labour Relations Agency.
- (9) In its application to orders under paragraph (7)(a), Article 34(1) includes power to amend this Article.

Consequential adjustment of time limits: industrial tribunals

21.—(1) The Department may, in relation to a jurisdiction listed in Schedule 2 or 3, by regulations make provision about the time limit for beginning proceedings in respect of a claim concerning a matter to which a statutory procedure applies.

- (2) Regulations under this Article may, in particular—
- (a) make provision extending, or authorising the extension of, the time for beginning proceedings,
 - (b) make provision about the exercise of a discretion to extend the time for beginning proceedings, or
 - (c) make provision treating proceedings begun out of time as begun within time.

Consequential adjustment of time limits: Fair Employment Tribunal

22.—(1) The Department may by regulations make provision about the time limit for bringing a complaint under Article 38 of the Fair Employment and Treatment Order concerning a matter to which a statutory procedure applies.

- (2) Regulations under this Article may, in particular—
- (a) make provision extending, or authorising the extension of, the time for bringing such a complaint,
 - (b) make provision about the exercise of a discretion to extend the time for bringing such a complaint, or
 - (c) make provision treating complaints made out of time as made within time.

Procedural fairness in unfair dismissal

23.—(1) Part XI of the Employment Rights Order (unfair dismissal) shall be amended as follows.

- (2) After Article 130 there shall be inserted—

“Procedural fairness

130A.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) one of the procedures set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003 (dismissal and disciplinary procedures) applies in relation to the dismissal,
- (b) the procedure has not been completed, and
- (c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.

(2) Subject to paragraph (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of Article 130(4)(a) as by itself making the employer’s action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.

(3) For the purposes of this Article, any question as to the application of a procedure set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003, completion of such a procedure or failure to comply with the requirements of such a procedure shall be determined by reference to regulations under Article 17 of that Order.”.

(3) In Article 146 (the remedies: orders and compensation), at the end there shall be inserted—

“(5) Where—

- (a) an employee is regarded as unfairly dismissed by virtue of Article 130A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason), and
- (b) an order is made in respect of the employee under Article 147,

the industrial tribunal shall, subject to paragraph (6), also make an award of four weeks' pay to be paid by the employer to the employee.

(6) An industrial tribunal shall not be required to make an award under paragraph (5) if it considers that such an award would result in injustice to the employer.”.

(4) In Article 151 (under which an award of compensation falls to be made if an employee is reinstated or re-engaged in pursuance of an order under Article 147, but the terms of the order are not fully complied with), after paragraph (2) there shall be inserted—

“(2A) There shall be deducted from any award under paragraph (1) the amount of any award made under Article 146(5) at the time of the order under Article 147.”.

(5) In Article 154 (basic award: minimum in certain cases) after paragraph (1) there shall be inserted—

“(1A) Where—

- (a) an employee is regarded as unfairly dismissed by virtue of Article 130A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason),
- (b) an award of compensation falls to be made under Article 146(4), and
- (c) the amount of the award under Article 152(1)(a), before any reduction under Article 156(3A) or (4), is less than the amount of four weeks' pay,

the industrial tribunal shall, subject to paragraph (1B), increase the award under Article 152(1)(a) to the amount of four weeks' pay.

(1B) An industrial tribunal shall not be required by paragraph (1A) to increase the amount of an award if it considers that the increase would result in injustice to the employer.”.

(6) In Article 157 (compensatory award) at the end there shall be inserted—

“(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under Article 151(3)(a), there shall be deducted from the compensatory award any award made under Article 146(5) at the time of the order under Article 147.”.