

STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART IV

DISPUTE RESOLUTION, ETC.

Statutory procedures

Statutory dispute resolution procedures

15.—^{F1}(1) Schedule 1 (which sets out the statutory dismissal and disciplinary procedures) has 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.

F1 Art. 15(1) substituted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), ss. 1(2), 17(1), [Sch. 1 para. 2](#); S.R. 2011/159, [art. 2](#) (with [art. 3](#), [Sch.](#))

Contracts of employment

16. ^{F2}

F2 Art. 16 repealed (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), ss. 2, 16, 17(1), [Sch. 4](#); S.R. 2011/159, [art. 2](#) (with [art. 3](#), [Sch.](#))

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. ^{F3}

F3 Art. 19 repealed (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), ss. 1(1)(a), 16, 17(1), [Sch. 4](#); S.R. 2011/159, [art. 2](#) (with [art. 3](#), [Sch.](#))

Complaints about grievances: Fair Employment Tribunal

20. ^{F4}

F4 Art. 20 repealed (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), ss. 1(1)(a), 16, 17(1), [Sch. 4](#); S.R. 2011/159, [art. 2](#) (with [art. 3](#), [Sch.](#))

Consequential adjustment of time limits: industrial tribunals

21. ^{F5}

F5 Art. 21 repealed (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), ss. 3, 16, 17(1), [Sch. 4](#); S.R. 2011/159, [art. 2](#) (with [art. 3](#), [Sch.](#))

Consequential adjustment of time limits: Fair Employment Tribunal

22. ^{F6}

F6 Art. 22 repealed (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), ss. 3, 16, 17(1), [Sch. 4](#); S.R. 2011/159, [art. 2](#) (with [art. 3](#), [Sch.](#))

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.” .

Employment particulars

Particulars of procedures relating to discipline or dismissal

24.—(1) Article 35 of the Employment Rights Order (note about disciplinary rules and procedures) shall be amended as follows.

(2) In paragraph (1) (which requires a statement under Article 33 of that Order to include a note specifying the disciplinary rules and procedures applying to an employee), after sub-paragraph (a) there shall be inserted—

“(aa) specifying any procedure applicable to the taking of disciplinary decisions relating to the employee, or to a decision to dismiss the employee, or referring the employee to the provisions of a document specifying such a procedure which is reasonably accessible to the employee,” .

(3) In that paragraph, in sub-paragraph (b)(i) (which requires the note to specify a person for the employee to apply to if he is dissatisfied with a disciplinary decision) after “him” there shall be inserted “ or any decision to dismiss him ”.

(4) In paragraph (2) (which provides that the note does not need to specify the rules and procedures relating to health and safety at work) after “decisions,” there shall be inserted “ decisions to dismiss ”.

Removal of exemption for small employers

25. In Article 35 of the Employment Rights Order (note about disciplinary rules and procedures), paragraphs (3) and (4) (exemptions for undertakings with less than 20 employees) shall cease to have effect.

Use of alternative documents to give particulars

26. In Part III of the Employment Rights Order (employment particulars), after Article 39 there shall be inserted—

“Use of alternative documents to give particulars

39A.—(1) Paragraphs (2) and (3) apply where—

- (a) an employer gives an employee a document in writing in the form of a contract of employment or letter of engagement,
- (b) the document contains information which, were the document in the form of a statement under Article 33, would meet the employer's obligation under that Article in relation to the matters mentioned in paragraphs (3) and (4)(a) to (c), (d) (i), (f) and (h) of that Article, and
- (c) the document is given after the beginning of the employment and before the end of the period for giving a statement under that Article.

(2) The employer's duty under Article 33 in relation to any matter shall be treated as met if the document given to the employee contains information which, were the document in

the form of a statement under that Article, would meet the employer's obligation under that Article in relation to that matter.

(3) The employer's duty under Article 35 shall be treated as met if the document given to the employee contains information which, were the document in the form of a statement under Article 33 and the information included in the form of a note, would meet the employer's obligation under Article 35.

(4) For the purposes of this Article a document to which paragraph (1)(a) applies shall be treated, in relation to information in respect of any of the matters mentioned in Article 33(4), as specifying the date on which the document is given to the employee as the date as at which the information applies.

(5) Where paragraph (2) applies in relation to any matter, the date on which the document by virtue of which that paragraph applies is given to the employee shall be the material date in relation to that matter for the purposes of Article 36(1).

(6) Where paragraph (3) applies, the date on which the document by virtue of which that paragraph applies is given to the employee shall be the material date for the purposes of Article 36(1) in relation to the matters of which particulars are required to be given under Article 35.

(7) The reference in Article 36(6) to an employer having given a statement under Article 33 shall be treated as including his having given a document by virtue of which his duty to give such a statement is treated as met.

Giving of alternative documents before start of employment

39B. A document in the form of a contract of employment or letter of engagement given by an employer to an employee before the beginning of the employee's employment with the employer shall, when the employment begins, be treated for the purposes of Article 39A as having been given at that time.”.

Failure to give statement of employment particulars, etc.: industrial tribunals

27.—(1) This Article applies to proceedings before an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4.

(2) If in the case of proceedings to which this Article applies—

- (a) the industrial tribunal finds in favour of the employee, but makes no award to him in respect of the claim to which the proceedings relate, and
- (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order (duty to give a written statement of initial employment particulars or of particulars of change),

the tribunal shall, subject to paragraph (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

(3) If in the case of proceedings to which this Article applies—

- (a) the industrial tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and
- (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order,

the tribunal shall, subject to paragraph (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

- (4) In paragraphs (2) and (3)—
 - (a) references to the minimum amount are to an amount equal to two weeks' pay, and
 - (b) references to the higher amount are to an amount equal to four weeks' pay.
- (5) The duty under paragraph (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that paragraph unjust or inequitable.
- (6) The amount of a week's pay of an employee shall—
 - (a) be calculated for the purposes of this Article in accordance with Chapter IV of Part I of the Employment Rights Order; and
 - (b) not exceed the amount for the time being specified in Article 23 of that Order (maximum amount of week's pay).
- (7) For the purposes of Chapter IV of Part I of the Employment Rights Order as applied by paragraph (6), the calculation date shall be taken to be—
 - (a) if the employee was employed by the employer on the date the proceedings were begun, that date, and
 - (b) if he was not, the effective date of termination as defined by Article 129 of that Order.
- (8) The Department may by order—
 - (a) amend Schedule 4 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 4, 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.

Failure to give statement of employment particulars, etc.: Fair Employment Tribunal

28.—(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—
 - (a) the Fair Employment Tribunal finds in favour of the employee, but makes no award to him in respect of the complaint to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order (duty to give a written statement of initial employment particulars or of particulars of change),
 the Tribunal shall, subject to paragraph (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.
- (3) If in the case of proceedings to which this Article applies—
 - (a) the Fair Employment Tribunal makes an award to the employee in respect of the complaint to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order,

the Tribunal shall, subject to paragraph (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In paragraphs (2) and (3)—

- (a) references to the minimum amount are to an amount equal to two weeks' pay, and
- (b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under paragraph (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that paragraph unjust or inequitable.

(6) The amount of a week's pay of an employee shall—

- (a) be calculated for the purposes of this Article in accordance with Chapter IV of Part I of the Employment Rights Order; and
- (b) not exceed the amount for the time being specified in Article 23 of that Order (maximum amount of week's pay).

(7) For the purposes of Chapter IV of Part I of the Employment Rights Order as applied by paragraph (6), the calculation date shall be taken to be—

- (a) if the employee was employed by the employer on the date the proceedings were begun, that date, and
- (b) if he was not, the effective date of termination as defined by Article 129 of that Order.

(8) The Department may by order—

- (a) make provision for this Article not to apply to proceedings relating to complaints under Article 38 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.

General

Unfair dismissal: adjustments under Articles 17 and 27

29. In the Employment Rights Order, after Article 158 there shall be inserted—

“Adjustments under the Employment (Northern Ireland) Order 2003

158A. Where an award of compensation for unfair dismissal falls to be—

- (a) reduced or increased under Article 17 of the Employment (Northern Ireland) Order 2003 (non-completion of statutory procedures); or
- (b) increased under Article 27 of that Order (failure to give statement of employment particulars),

the adjustment shall be in the amount awarded under Article 152(1)(b) and shall be applied immediately before any reduction under Article 157(6) or (7).”.

Changes to legislation:

There are currently no known outstanding effects for the The Employment (Northern Ireland) Order 2003, PART IV.