
DRAFT STATUTORY INSTRUMENTS

1998 No.

**The Fair Employment and Treatment
(Northern Ireland) Order 1998**

PART IX

THE FAIR EMPLOYMENT TRIBUNAL

Constitution

The Fair Employment Tribunal

81.—(1) The Department shall by regulations provide for the establishment of a tribunal, to be known as the Fair Employment Tribunal for Northern Ireland, to exercise the jurisdiction conferred on it by this Order.

(2) Regulations under this Article may provide for the jurisdiction of the Tribunal to be exercised by a single tribunal or by two or more tribunals.

President, Vice-President and Chairmen

82.—(1) There shall continue to be—

- (a) a President of the Industrial Tribunals and the Fair Employment Tribunal;
- (b) a Vice-President of the Industrial Tribunals and the Fair Employment Tribunal; and
- (c) a panel of chairmen of the Fair Employment Tribunal,

who shall each be appointed by the Lord Chancellor and shall exercise the functions respectively conferred on them by or under this Order or any other statutory provision.

(2) A person is not qualified for appointment under paragraph (1) unless he is a barrister or solicitor of not less than 7 years' standing.

(3) The President and Vice-President may each resign his office at any time by notice in writing to the Lord Chancellor and shall each vacate his office on the day on which he attains the age of 70, but subject to paragraph (4) and subsections (4) to (6) of section 26 of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).

(4) If, in the opinion of the Lord Chancellor, the President or Vice-President is unfit to continue in office or is incapable of performing his duties, the Lord Chancellor may revoke his appointment.

(5) A person appointed under paragraph (1)(c) to a panel of chairmen shall hold and vacate office as provided by or under regulations under Article 81.

(6) The functions of the President or Vice-President may, if he is for any reason unable to act or during a vacancy in his office, be discharged by a person nominated for that purpose by the Lord Chancellor.

(7) Regulations under Article 81 may provide for specified functions of the President and Vice-President (including functions under Articles 17 and 85) to be exercised in specified circumstances by a person appointed, under paragraph (1)(c), to a panel of chairmen.

Remuneration and allowances

83.—(1) The Department may pay to members of the Tribunal (other than the President and the Vice-President) such remuneration, fees and allowances as it may, with the consent of the Department of Finance and Personnel, determine.

(2) The Department may pay to any other persons such allowances as it may, with the consent of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at the Tribunal.

Procedure

Tribunal procedure

84.—(1) The Department may by regulations make such provision as appears to it to be necessary or expedient with respect to proceedings before the Tribunal.

(2) The regulations may, in particular, include provision—

- (a) for determining by which tribunal any proceedings are to be determined, where the jurisdiction of the Tribunal is being exercised by more than one tribunal;
- (b) for parties to proceedings to be represented by such persons as may be determined by or under the regulations;
- (c) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses;
- (d) as to the admissibility of evidence;
- (e) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court;
- (f) for enabling an officer of the Tribunal to determine matters arising prior to a hearing;
- (g) prescribing forms to be completed by the parties to a complaint under Article 38 before any hearing before the Tribunal;
- (h) for enabling the Tribunal to review its decisions, and revoke or vary its orders or awards, in such circumstances as may be determined in accordance with the regulations;
- (i) for the award of costs;
- (j) for taxing or otherwise settling any such costs (and, in particular, for enabling such costs to be taxed in the county court); and
- (k) for the registration and proof of decisions, orders and awards of the Tribunal.

(3) The regulations may include provision authorising or requiring the Tribunal, in circumstances specified in the regulations, to send notice or a copy of—

- (a) any document specified in the regulations which relates to any proceedings before the Tribunal; or
- (b) any decision, order or award of the Tribunal,

to any person or body so specified.

(4) In relation to proceedings on a complaint under Article 38, the regulations shall include provision for postponing the hearing of a complaint for such period as may be determined in

accordance with the regulations for the purpose of giving an opportunity for the complaint to be settled by way of conciliation or arbitration and withdrawn.

- (5) The regulations may enable the Tribunal to sit in private for the purposes of—
- (a) hearing evidence which in the opinion of the Tribunal relates to matters of such a nature that it would be against the interests of national security, public safety or public order to allow the evidence to be given in public;
 - (b) hearing evidence from any person which in the opinion of the Tribunal is likely to consist of—
 - (i) information which he could not disclose without contravening a prohibition imposed by or under any statutory provision;
 - (ii) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person;
 - (iii) information the disclosure of which would cause substantial injury to any undertaking of his or in which he works; or
 - (iv) information the disclosure of which would create a substantial risk that he or another individual would be subject to physical attack or sectarian harassment.

(6) Where the Tribunal sits in private in accordance with any provision included in the regulations by virtue of paragraph (5), the Tribunal may make an order prohibiting the disclosure of specified information, except so far as the disclosure is necessary—

- (a) for the purposes of the proceedings;
 - (b) for communicating to any person the decision of the Tribunal in the proceedings and for communicating the reasons for the decision to any person to whom the Tribunal is required by the regulations to communicate them; or
 - (c) for the purposes of any criminal proceedings or to comply with the order of a court.
- (7) The Tribunal shall give reasons for its decisions.
- (8) Part I of the Arbitration Act 1996 does not apply to any proceedings before the Tribunal.
- (9) Any person who without reasonable excuse fails to comply with—
- (a) any requirement imposed by the regulations by virtue of paragraph (2)(c); or
 - (b) any requirement with respect to the discovery or inspection of documents imposed by the regulations by virtue of paragraph (2)(e),

is guilty of an offence.

- (10) A person guilty of an offence under paragraph (9)—
- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
 - (b) if without reasonable excuse the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.

(11) If a person discloses any information in contravention of an order of the Tribunal under paragraph (6), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Procedure for matters within jurisdiction of industrial tribunal

85.—(1) This Article applies where a complaint has been made to the Tribunal under Article 38 and it appears to the President or Vice-President that the complaint is one in respect of which—

- (a) a complaint could be made to an industrial tribunal on the ground that—
- (i) a person has committed an act of discrimination against the complainant which is unlawful by virtue of any provision of Part III of the Sex Discrimination (Northern Ireland) Order 1976; or
 - (ii) a person has committed an act of discrimination against the complainant which is unlawful by virtue of any provision of Part II of the Disability Discrimination Act 1995; or
 - (iii) the complainant has been unfairly dismissed within the meaning of Part XI of the Employment Rights (Northern Ireland) Order 1996; or
 - (iv) a person has committed an act of discrimination against the complainant which is unlawful by virtue of any provision of Part II of the Race Relations (Northern Ireland) Order 1997; or
- (b) a complaint has been made to an industrial tribunal on that ground, but the proceedings under the Sex Discrimination (Northern Ireland) Order 1976, the Disability Discrimination Act 1995, the Employment Rights (Northern Ireland) Order 1996 or the Race Relations (Northern Ireland) Order 1997, (as the case may be), have not been disposed of.
- (2) Where this Article applies and the President or Vice-President considers that any matters which would otherwise fall to be determined by an industrial tribunal could appropriately be heard and determined by the Tribunal, he may direct that those matters shall be so heard and determined.
- (3) Where a direction is made under paragraph (2) that any matters shall be heard and determined by the Tribunal, then—
- (a) for the purpose of complying with that direction, the Tribunal shall, in relation to those matters, have the jurisdiction, and may exercise all the powers, of an industrial tribunal;
 - (b) none of the following, namely—
 - (i) Article 63(3) of the Sex Discrimination (Northern Ireland) Order 1976;
 - (ii) Article 11(5) of the Industrial Tribunals (Northern Ireland) Order 1996;
 - (iii) Article 52(3) of the Race Relations (Northern Ireland) Order 1997,
 shall apply in relation to the hearing and determination of those matters by the Tribunal;
 - (c) Articles 16 and 17 of the Industrial Tribunals (Northern Ireland) Order 1996 (recovery of, and interest on, sums awarded by industrial tribunals) shall apply in relation to any sum payable in pursuance of a decision of the Tribunal in relation to any such matters as it applies in relation to a sum payable in pursuance of a decision of an industrial tribunal; and
 - (d) Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996 (appeals against decisions of industrial tribunals) shall apply in relation to a decision of the Tribunal in relation to any such matter as it applies in relation to a decision of an industrial tribunal.

Interest on awards of compensation

86.—(1) The Department may by order made with the approval of the Department of Finance and Personnel provide that an award of compensation under Article 39(1)(b) shall carry interest at such rate and between such times as may be prescribed by the order.

- (2) The power conferred by paragraph (1) includes power—
- (a) to specify cases or circumstances in which interest is not payable;
 - (b) to provide that interest is payable only on compensation exceeding a specified amount or falling between specified amounts;
 - (c) to make provision for the manner in which and the periods by reference to which interest is to be calculated and paid;

- (d) to provide that any statutory provision—
 - (i) does or does not apply in relation to interest payable by virtue of paragraph (1); or
 - (ii) applies to it with such modifications as may be specified in the order;
 - (e) to make provision for cases where compensation is payable in pursuance of decisions or awards made on appeal from the Tribunal.
- (3) In particular, an order under paragraph (1) may provide that the rate of interest shall be the rate from time to time in force in relation to interest on amounts awarded by decree in the county court.

Enforcement

87. The Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to an award of compensation under Article 39(1)(b) and any interest thereon due by virtue of an order under Article 86(1) as it applies to a sum due under a money judgment (within the meaning of that Order).

Other methods of dispute resolution

Conciliation

88.—(1) Where a complaint is presented to the Tribunal under Article 38, the Tribunal shall send a copy of the complaint to the Agency and it shall be the duty of the Agency—

- (a) if it is requested to do so by both the complainant and the respondent; or
- (b) if, in the absence of any such request, the Agency considers that it could act under this paragraph with a reasonable prospect of success,

to endeavour to promote a settlement of the complaint without its being determined by the Tribunal.

(2) Where, before a complaint has been presented to the Tribunal, a request is made to the Agency to make its services available in the matter by a person who, if the complaint were so presented, would be the complainant or respondent, paragraph (1) applies as if the complaint had been so presented and a copy of it had been sent to the Agency.

(3) In proceeding under paragraph (1) or (2), the Agency shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

(4) Anything communicated to the Agency in connection with the performance of its functions under this Article shall not be admissible in evidence in any proceedings before the Tribunal except with the consent of the person who communicated it to the Agency.

Labour Relations Agency arbitration scheme

89.—(1) The Agency may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before the Tribunal.

(2) When the Agency has prepared such a scheme it shall submit a draft of the scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the scheme; and
- (b) making provision for it to come into effect.

(3) The Agency may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the revised scheme; and

(b) making provision for it to come into effect.

(4) The Agency may take any steps appropriate for promoting awareness of a scheme prepared under this Article.

(5) Where the parties to any dispute within paragraph (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this Article, the Agency shall refer the dispute to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).

(6) Nothing in the Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this Article except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.

Appeals

Appeals from Tribunal

90.—(1) Where—

- (a) a person is dissatisfied in point of law with a decision of the Tribunal under Article 15, 16 or 17; or
- (b) any party to a complaint under Article 38 is dissatisfied in point of law with a decision of the Tribunal; or
- (c) a person is dissatisfied in point of law with a decision of the Tribunal on an appeal brought by him under Article 62 or 63,

he may, according as rules of court may provide, either appeal from it to the Court of Appeal or require the Tribunal to state and sign a case for the opinion of the Court of Appeal.

(2) Rules of court may provide for authorising or requiring the Tribunal to state, in the form of a special case for the decision of the Court of Appeal, any question of law arising in the proceedings.

(3) A person on whom a penalty is imposed under Article 17(3)(b) may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the amount of the penalty.

(4) In paragraph (1)(a) the reference to Articles 15, 16 and 17 includes a reference to those Articles as applied by Article 59.

(5) Paragraph (1)(b) does not apply to a decision of the Tribunal to which Article 85(3)(d) applies.