Fair Employment (Northern Ireland) Act 1989

1989 CHAPTER 32

PART I

THE FAIR EMPLOYMENT COMMISSION, THE FAIR EMPLOYMENT TRIBUNAL AND THE FUNCTIONS OF THE COMMISSION AND THE TRIBUNAL

Appeals and legal proceedings in relation to undertakings and directions

15 Appeal to Tribunal against directions under section 12 or 13

(1) Where, under section 12(3) or 13(3)(a) of this Act, the Commission serves on a person a notice containing directions (not being directions substituted for others in accordance with an application made by him under section 14(3) of this Act), he may within 21 days from the date of service appeal to the Tribunal against the directions.

(2) The appeal may be brought on any of the following grounds—

(a) that in all the circumstances it is unreasonable to expect the appellant to comply with the directions,

(b) that in all the circumstances the directions are not appropriate for promoting equality of opportunity, or

(c) that the appellant is already affording equality of opportunity and taking any appropriate action to promote equality of opportunity and the directions are, therefore, unnecessary.

(3) On hearing the appeal the Tribunal may—

(a) dismiss the appeal, or

(b) quash the directions or any of them, or

(c) substitute for the directions or any of them such other directions (of a kind that the Commission could have given) as the Tribunal considers reasonable and appropriate in all the circumstances.

(4) Directions substituted under subsection (3)(c) above are binding on the appellant and are enforceable only in accordance with section 16 of this Act.

16 Order of Tribunal to enforce undertaking or directions

(1) Where—

(a) an undertaking to take action for promoting equality of opportunity—

(i) which has been given to the Commission under section 12(2) or 13 of this Act and has not been superseded by directions given by the Commission, or

(ii) which has been given to the Commission under section 14(3) of this Act,

has not been complied with within such period as the Commission considers reasonable,

(b) directions given by the Commission or substituted by the Tribunal under section 15 of this Act for directions given by the Commission have not been complied with within such period as the Commission considers reasonable, or

(c) steps have not been taken to the Commission's satisfaction within such period as the Commission considers reasonable to comply with the undertaking or directions,

the Commission may, subject to subsection (2) below, make an application to the Tribunal under this section for enforcement of the undertaking or directions.

(2) An application for the enforcement of directions shall not be made—

(a) until the end of the period of 21 days within which an appeal may be brought to the Tribunal under section 15 of this Act,

(b) if such an appeal is brought, until—

(i) the appeal is abandoned, or

(ii) the appeal is determined and the period within which notice of an appeal to the Court of Appeal under section 18 of this Act may be given has expired, or

(c) if notice of an appeal to the Court of Appeal under that section is given within that period, until the appeal is abandoned or determined.

(3) On an application under subsection (1) above the Tribunal—

(a) may make such order as it thinks fit for the purpose of giving effect to the undertaking or directions, and

(b) whether or not it makes such an order, may order that the whole or part of the undertaking or directions shall cease to have effect.

(4) An order under subsection (3)(a) above—

(a) shall specify the steps to be taken by the person by whom the undertaking was given or to whom the directions were given,

(b) may specify the time within which each step is to be taken, and

(c) may require a specified person to attend before the Tribunal at a specified time to report to the Tribunal on the extent to which those steps have been taken.

(5) The terms of an order under subsection (3)(a) above (except so far as it requires attendance before the Tribunal) shall be such as, in the opinion of the Tribunal, are not substantially more onerous than the terms of the undertaking or directions.

(6) The Commission—

(a) is entitled to appear and be heard when a person attends before the Tribunal in pursuance of an order under subsection (3)(a) above, and

(b) may itself apply to the Tribunal for the enforcement of such an order.

(7) Subject to subsection (5) above, the Tribunal may at any time revoke or vary the terms of an order under subsection (3) above—

(a) on an application by the Commission or by the person in relation to whom the order was made, or

(b) where a person attends before the Tribunal in pursuance of an order under subsection (3)(a) above or on an application by the Commission under subsection (6)(b) above.

(8) In subsection (1) above—

(a) the references to an undertaking given to the Commission under section 12(2) or 14(3) of this Act include references to an undertaking given to the Fair Employment Agency for Northern Ireland under section 13(1) or (5) of the Fair Employment (Northern Ireland) Act 1976 before the commencement of section 12 of this Act, and

(b) the reference to directions given by the Commission or substituted by the Tribunal under section 15 of this Act for such directions includes a reference to directions given by the Fair Employment Agency for Northern Ireland before the commencement of that section or substituted by the Fair Employment Appeals Board under section 14 of the Fair Employment (Northern Ireland) Act 1976 for such directions.

17 Failure to comply with order of Tribunal

(1) Subsection (3) below applies where the Tribunal determines that a person (in this section referred to as "the respondent")—

(a) has failed to comply with a requirement to attend before the Tribunal included in an order under section 16(3) of this Act, or

(b) has failed to comply to the satisfaction of the Tribunal with any term included in such an order by virtue of section 16(4)(a) or (b) of this Act.

(2) The Tribunal shall not make a determination under subsection (1) above until the end of the period within which notice of an appeal to the Court of Appeal under section 18 of this Act against the order in question may be given or, if notice of such an appeal is given within that period, until the appeal is abandoned or determined.

(3) Where this subsection applies, the President or Vice-President may—

(a) certify the failure to the High Court, or

(b) require the respondent to pay to the Department a pecuniary penalty of an amount not exceeding £30,000.

(4) Where the President or Vice-President has certified a failure under subsection (3)(a) above, the High Court may deal with the respondent as if the relevant order of the Tribunal had been an order of the High Court.

(5) The Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to a penalty imposed under subsection (3)(b) above

as it applies to a sum due to the Crown under a money judgment (within the meaning of that Order).

(6) If it appears to the Department that there has been a change in the value of money since the relevant date, it may by order substitute for the sum for the time being specified in subsection (3)(b) above such other sum as appears to it to be justified by the change.

(7) In subsection (6) above "the relevant date" means—

(a) in relation to the first order under that subsection, the commencement of this section, and

(b) in relation to each subsequent order, the last occasion when the sum specified in subsection (3)(b) above was altered.

(8) The Department shall pay into the Consolidated Fund of Northern Ireland any sums received in respect of penalties under this section.

18 Appeal to Court of Appeal from certain decisions of Tribunal

(1) A person who is dissatisfied in point of law with any decision of the Tribunal under section 15, 16 or 17 of this Act 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 section 17(3)(b) of this Act may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the amount of the penalty.