



2016 CHAPTER 15

Fair Employment Tribunal

Conciliation before and after complaint to Fair Employment Tribunal

5.—(1) The Fair Employment and Treatment (Northern Ireland) Order 1998 is amended as follows.

(2) After Article 88 insert—

“88ZA Requirement to contact Labour Relations Agency before complaint to Tribunal

(1) Subject to paragraph (7), before a person (“the prospective complainant”) presents a complaint to the Tribunal under Article 38 relating to any matter, the prospective complainant must provide to the Agency prescribed information, in the prescribed manner, about that matter.

(2) On receiving the prescribed information in the prescribed manner, the Agency shall send a copy of it to a conciliation officer.

(3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be the complainant and the respondent if a complaint were presented to the Tribunal under Article 38.

(4) If—

(a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or

(b) the prescribed period expires without a settlement having been reached,

the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective complainant.

(5) The conciliation officer may continue to endeavour to promote a settlement after the expiry of the prescribed period.

(6) In paragraphs (3) to (5) “settlement” means a settlement that avoids a complaint being presented to the Tribunal under Article 38.

(7) A person may present a complaint to the Tribunal under Article 38 without complying with the requirement in paragraph (1) in prescribed cases.

The cases that may be prescribed include (in particular)—

- (a) cases where the requirement is complied with by another person presenting a complaint to the Tribunal under Article 38 relating to the same matter;
- (b) cases where prescribed proceedings are instituted by means of the same form as the complaint;
- (c) cases where Article 88ZB applies because the Agency has been contacted by a person who is the respondent on a complaint presented to the Tribunal under Article 38.

(8) A person who is subject to the requirement in paragraph (1) may not present a complaint to the Tribunal under Article 38 without a certificate under paragraph (4).

(9) In paragraphs (1) to (7) “prescribed” means prescribed in regulations under Article 84.

(10) Regulations under Article 84 may make such further provision as appears to the Department to be necessary or expedient with respect to the conciliation process provided for by paragraphs (1) to (8).

(11) Regulations under Article 84 may (in particular) make provision—

- (a) authorising 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 providing information to the Agency under paragraph (1) or issuing a certificate under paragraph (4);
- (b) requiring the Agency to give a person any necessary assistance to comply with the requirement in paragraph (1);
- (c) for the extension of the period prescribed for the purposes of paragraph (3);
- (d) treating the requirement in paragraph (1) as complied with, for the purposes of any provision extending the time limit for presenting a complaint to the Tribunal under Article 38, by a person who is relieved of that requirement by virtue of paragraph (7)(a).

88ZB Conciliation before complaint to Tribunal: other Labour Relations Agency duties

- (1) This Article applies where—
- (a) a person contacts the Agency requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to a complaint being presented to the Tribunal under Article 38 against that person, and
 - (b) the Agency has not received information from the prospective complainant under Article 88ZA(1).
- (2) This Article also applies where—
- (a) a person contacts the Agency requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to a complaint being presented to the Tribunal under Article 38 by that person, and
 - (b) the requirement in Article 88ZA(1) would apply to that person but for Article 88ZA(7).
- (3) Where this Article applies a conciliation officer shall endeavour to promote a settlement between the persons who would be the complainant and the respondent if a complaint were presented to the Tribunal under Article 38.
- (4) If at any time—
- (a) the conciliation officer concludes that a settlement is not possible, or
 - (b) a conciliation officer comes under the duty in Article 88ZA(3) to promote a settlement between the persons who would be the complainant and the respondent,

the duty in paragraph (3) ceases to apply at that time.

(5) In paragraphs (3) and (4) “settlement” means a settlement that avoids a complaint being presented to the Tribunal under Article 38.

88ZC Conciliation after complaint presented

88ZC. Where a complaint has been 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 Article with a reasonable prospect of success,

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

- (3) In consequence of subsection (2)—
- (a) in Article 84 (tribunal procedure), in paragraph (2A)(b), after “form” insert “(including certificates issued under Article 88ZA or 88ZB)”;
 - (b) in Article 88 (conciliation)—
 - (i) omit paragraphs (1) and (2);
 - (ii) in paragraph (3), for “paragraph (1) or (2)” substitute “any of Articles 88ZA to 88ZC”;
 - (iii) in paragraph (4), after “this Article” insert “or any of Articles 88ZA to 88ZC”;
 - (c) in Article 88A (conciliation: recovery of sums payable under compromises), in paragraph (1)(a)(i), for “Article 88” substitute “any of Articles 88ZA to 88ZC”;
 - (d) in Article 100 (restrictions on contracting out), in paragraph (2)(a), for “Article 88(1) or (2)” substitute “any of Articles 88ZA to 88ZC”.

Extension of time limit to allow conciliation

6.—(1) In Article 46 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (period within which proceedings must be brought), in paragraph (1), for “to Article 46A” substitute “and to Articles 46A and 46B”.

(2) After Article 46A insert—

“46B Extension of time limit to allow conciliation

(1) This Article applies for the purposes of Article 46(1)(a).

But it does not apply to a dispute which is a relevant cross-border dispute for the purposes of Article 46A.

(2) In this Article—

- (a) Day A is the day on which the complainant concerned complies with the requirement in paragraph (1) of Article 88ZA (requirement to contact Agency before complaint to Tribunal) in relation to the matter in respect of which the complaint is brought, and
- (b) Day B is the day on which the complainant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under paragraph (10) of that Article) the certificate issued under paragraph (4) of that Article.

(3) In working out when the time limit set by Article 46(1)(a) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by Article 46(1)(a) would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Any power of the Tribunal to extend the time limit set by Article 46(1)(a) is exercisable in relation to the time limit as extended by this Article.”.

Power to require party to proceedings to pay deposit

7.—(1) In Article 84B of the Fair Employment and Treatment (Northern Ireland) Order 1998 (pre-hearing reviews and preliminary matters), in paragraph (2)(a) (power to require party to proceedings to pay deposit)—

- (a) omit “, if he wishes to continue to participate in those proceedings,”;
- (b) after “£500” add “as a condition of continuing to participate in those proceedings or doing such other thing as may be prescribed in the regulations”.

(2) In Article 104 of that Order (regulations and orders)—

- (a) in paragraph (1), after “101(1)” insert “and no regulations which include provision under Article 84B(2)(a)”;
- (b) in paragraph (2), after “Schedule 1” insert “and regulations which include provision under Article 84B(2)(a)”.