



## 2011 CHAPTER 13

VALID FROM 03/04/2011

### *Dispute resolution procedures*

#### **Repeal of statutory grievance procedures**

**1.**—(1) In the Employment (Northern Ireland) Order 2003 (NI 15) the following provisions (which relate to the statutory grievance procedures) are repealed—

- (a) Articles 19 and 20;
- (b) Part 2 of Schedule 1.

(2) Schedule 1 (which contains amendments consequential on subsection (1)) has effect.

#### **Commencement Information**

- II** [S. 1](#) wholly in operation at 3.4.2011, see [s. 17\(1\)](#) and [S.R. 2011/159](#), [art. 2](#) (subject to transitional provisions and savings in [art. 3](#), [Sch.](#))

#### **Statutory dispute resolution procedures: effect on contracts of employment**

**2** Article 16 of the Employment (Northern Ireland) Order 2003 (which provides for every contract of employment to have effect to require the employer and employee to comply with statutory dispute resolution procedures) is repealed.

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#### **Commencement Information**

- I2** S. 2 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### **Statutory dispute resolution procedures: consequential adjustment of time limits**

**3** Articles 21 and 22 of the Employment (Northern Ireland) Order 2003 (which make provision about time limits for beginning proceedings where a statutory dispute resolution procedure applies) are repealed.

#### **Commencement Information**

- I3** S. 3 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### **Non-compliance with statutory Codes of Practice**

**4.**—(1) The Industrial Relations (Northern Ireland) Order 1992 (NI 5) is amended as follows.

(2) After Article 90 insert—

##### **“Effect of failure to comply with Code: adjustment of awards**

**90AA.**—(1) This Article applies to proceedings before—

- (a) an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4A;
- (b) the Fair Employment Tribunal relating to a claim by an employee under Article 38 of the Fair Employment (Northern Ireland) Order 1998;

and references in this Article to “the tribunal” are to be read accordingly.

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

- (a) the claim to which the proceedings relate concerns a matter—
  - (i) to which a relevant Code of Practice applies, and
  - (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employer has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

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the tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 50%.

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

- (a) the claim to which the proceedings relate concerns a matter—
  - (i) to which a relevant Code of Practice applies, and
  - (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employee has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 50%.

(4) In this Article—

“relevant Code of Practice” means a Code of Practice issued under Article 90 which relates exclusively or primarily to procedure for the resolution of disputes;

“statutory dispute resolution procedure” means a procedure set out in Part 1 of Schedule 1 to the Employment (Northern Ireland) Order 2003.

(5) Where an award falls to be adjusted under this Article and under Article 27 or 28 of the Employment (Northern Ireland) Order 2003, the adjustment under this Article shall be made before the adjustment under that Article.

(6) The Department may by order amend Schedule 4A for the purpose of—

- (a) adding a jurisdiction to the list in that Schedule, or
- (b) removing a jurisdiction from that list.

(7) No order shall be made under paragraph (6) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.”

(3) In Article 107(2) after “90(14)” insert “, 90AA(6) ”.

(4) After Schedule 4 insert as Schedule 4A the Schedule set out in Schedule 2 to this Act.

#### Commencement Information

- 14** S. 4 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

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VALID FROM 03/04/2011

*Procedure: industrial tribunals*

**Determination of industrial tribunal proceedings without hearing**

**5** In the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18), in Article 9 (industrial tribunal procedure regulations), after paragraph (3A) insert—

“(3AA) Industrial tribunal procedure regulations under paragraph (3A) may only authorise the determination of proceedings without any hearing in circumstances where—

- (a) all the parties to the proceedings consent in writing to the determination without a hearing, or
- (b) the person (or, where more than one, each of the persons) against whom the proceedings are brought—
  - (i) has presented no response in the proceedings, or
  - (ii) does not contest the case.

(3AB) For the purposes of paragraph (3AA)(b), a person does not present a response in the proceedings if he presents a response but, in accordance with provision made by the regulations, it is not accepted.”.

**Commencement Information**

- I5** [S. 5](#) wholly in operation at 3.4.2011, see [s. 17\(1\)](#) and [S.R. 2011/159](#), [art. 2](#) (subject to transitional provisions and savings in [art. 3](#), [Sch.](#))

**Restriction of publicity**

**6.—(1)** Article 13 of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) is amended as follows.

(2) In the heading to the Article omit the words “in cases involving sexual misconduct”.

(3) For paragraph (1) substitute—

“(1) Industrial tribunal procedure regulations may include provision for cases to which this paragraph applies enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

(1A) Paragraph (1) applies to cases—

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- (a) involving allegations of sexual misconduct;
- (b) where the disclosure of identifying matter would be likely to cause—
  - (i) an individual (whether a party to the proceedings or not) to be subjected to harassment;
  - (ii) such an individual, or any property of such an individual, to be placed at risk of injury or damage; or
- (c) where, in the opinion of the tribunal, the interests of justice otherwise require.

(1B) Industrial tribunal procedure regulations may include provision, for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation.”

(4) In paragraph (4) in the definition of “identifying matter” for “him as a person affected by, or as the person making, the allegation” substitute “ a party to the proceedings in question or such other persons (if any) as may be named in the restricted reporting order ”.

#### Commencement Information

**16** S. 6 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Enforcement of sums payable

7 In Article 17(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) for the words from “shall, if a county court so orders,” to the end substitute “ shall be enforceable as if it were payable under an order of the county court. ”.

#### Commencement Information

**17** S. 7 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Conciliation before bringing of proceedings

8.—(1) In the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18), Article 20 (conciliation) is amended as follows.

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(2) In paragraph (3) for the words from “shall act” to the end substitute “ may endeavour to promote a settlement between the parties without proceedings being instituted. ”.

(3) For paragraph (5) substitute—

“(5) Where the Agency acts pursuant to paragraph (3) in a case where the person claiming as specified in sub-paragraph (a) of that paragraph has ceased to be employed by the employer and the proceedings which he claims could be brought by him are proceedings under Article 145 of the Employment Rights Order, the Agency may in particular—

- (a) seek to promote the reinstatement or re-engagement of that person by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the Agency to be equitable, or
- (b) where the person does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to that person.”.

#### Commencement Information

- 18** S. 8 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Conciliation after bringing of proceedings

**9.**—(1) In the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18), in Article 20 (conciliation), paragraph (2A) is repealed.

(2) In that Order, in Article 21 (conciliation procedure), paragraph (2) is repealed.

#### Commencement Information

- 19** S. 9 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Recovery of sums payable under compromises involving the Agency

**10** In the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) after Article 21 insert—

##### “Conciliation: recovery of sums payable under compromises

**21A.**—(1) Paragraphs (3) to (6) apply if—

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- (a) the Agency—
  - (i) has taken action under Article 20 in a case, and
  - (ii) issues a certificate in writing stating that a compromise has been reached in the case, and
- (b) all of the terms of the compromise are set out—
  - (i) in a single relevant document, or
  - (ii) in a combination of two or more relevant documents.
- (2) A document is a “relevant document” for the purposes of paragraph (1) if—
  - (a) it is the certificate, or
  - (b) it is a document that is referred to in the certificate or that is referred to in a document that is within this sub-paragraph.
- (3) Any sum payable by a person under the terms of the compromise (a “compromise sum”) shall, subject to paragraphs (4) to (7), be recoverable as if the sum were payable under an order of the county court.
- (4) A compromise sum is not recoverable under paragraph (3) if—
  - (a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from him under the general law of contract, and
  - (b) that declaration is made.
- (5) If county court rules so provide, a compromise sum is not recoverable under paragraph (3) during the period—
  - (a) beginning with the issue of the certificate, and
  - (b) ending at such time as may be specified in, or determined under, county court rules.
- (6) If the terms of the compromise provide for the person to whom a compromise sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by him under paragraph (3) only if a county court so orders.
- (7) Once an application has been made for a declaration under paragraph (4) in relation to a sum, no further reliance may be placed on paragraph (3) for the recovery of the sum while the application is pending.
- (8) An application for a declaration under paragraph (4) may be made to an industrial tribunal or a county court.
- (9) Industrial tribunal procedure regulations may (in particular) make provision as to the time within which an application to an industrial tribunal for a declaration under paragraph (4) is to be made.

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(10) County court rules may make provision as to—

- (a) the time within which an application to a county court for a declaration under paragraph (4) is to be made;
- (b) when an application (whether made to a county court or an industrial tribunal) for a declaration under paragraph (4) is pending for the purposes of paragraph (7).

(11) Nothing in this Article shall be taken to prejudice any rights or remedies that a person has apart from this Article.

(12) In this Article “compromise” (except in the phrase “compromise sum”) means a settlement, or compromise, to avoid proceedings or bring proceedings to an end.”.

#### Commencement Information

**I10** S. 10 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

VALID FROM 03/04/2011

#### *Procedure: Fair Employment Tribunal*

#### **Powers of Fair Employment Tribunal in relation to matters within jurisdiction of industrial tribunals**

**11.—**(1) Article 85 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21) is amended as follows.

(2) In paragraph (1) for sub-paragraphs (a) and (b) substitute—

- “(a) a complaint could be made to an industrial tribunal by the complainant under any other statutory provision; or
- (b) such a complaint has been made, but the proceedings in the industrial tribunal in relation to that complaint have not been disposed of.”.

(3) In paragraph (3)(b) after “following” insert “ (if otherwise relevant to the industrial tribunal proceedings) ”.

#### Commencement Information

**I11** S. 11 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)



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### **Conciliation before bringing of proceedings**

**12** In the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21), in Article 88(2) (conciliation) for the words from “paragraph (1)” to the end substitute “ the Agency may endeavour to promote a settlement between the parties without proceedings being instituted. ”.

#### **Commencement Information**

**I12** S. 12 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

### **Conciliation after bringing of proceedings**

**13** In the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21), in Article 88 (conciliation), paragraph (1A) is repealed.

#### **Commencement Information**

**I13** S. 13 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

### **Recovery of sums payable under compromises involving the Agency**

**14** In the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21), after Article 88 insert—

#### **“Conciliation: recovery of sums payable under compromises**

**88A.**—(1) Paragraphs (3) to (6) apply if—

- (a) the Agency—
  - (i) has taken action under Article 88 in a case, and
  - (ii) issues a certificate in writing stating that a compromise has been reached in the case, and
- (b) all of the terms of the compromise are set out—
  - (i) in a single relevant document, or
  - (ii) in a combination of two or more relevant documents.

(2) A document is a “relevant document” for the purposes of paragraph (1) if—

- (a) it is the certificate, or
- (b) it is a document that is referred to in the certificate or that is referred to in a document that is within this sub-paragraph.

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(3) Any sum payable by a person under the terms of the compromise (a “compromise sum”) shall, subject to paragraphs (4) to (7), be recoverable as if the sum were payable under an order of the Tribunal.

(4) A compromise sum is not recoverable under paragraph (3) if—

(a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from him under the general law of contract, and

(b) that declaration is made.

(5) If county court rules so provide, a compromise sum is not recoverable under paragraph (3) during the period—

(a) beginning with the issue of the certificate, and

(b) ending at such time as may be specified in, or determined under, county court rules.

(6) If the terms of the compromise provide for the person to whom a compromise sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by him under paragraph (3) only if a county court so orders.

(7) Once an application has been made for a declaration under paragraph (4) in relation to a sum, no further reliance may be placed on paragraph (3) for the recovery of the sum while the application is pending.

(8) An application for a declaration under paragraph (4) may be made to the Tribunal or a county court.

(9) Regulations under Article 84 may (in particular) make provision as to the time within which an application to the Tribunal for a declaration under paragraph (4) is to be made.

(10) County court rules may make provision as to—

(a) the time within which an application to a county court for a declaration under paragraph (4) is to be made;

(b) when an application (whether made to a county court or the Tribunal) for a declaration under paragraph (4) is pending for the purposes of paragraph (7).

(11) Nothing in this Article shall be taken to prejudice any rights or remedies that a person has apart from this Article.

(12) In this Article “compromise” (except in the phrase “compromise sum”) means a settlement, or compromise, to avoid proceedings or bring proceedings to an end.”.

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#### Commencement Information

- I14** S. 14 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

PROSPECTIVE

#### *Time off for study or training*

#### **Time off for study or training**

**15.**—(1) In the Employment Rights (Northern Ireland) Order 1996 (NI 16) after Article 95 insert as Part 7A of that Order the provisions set out in Part 1 of Schedule 3 to this Act.

(2) Part 2 of Schedule 3 makes consequential amendments relating to the provisions inserted by subsection (1).

#### *Supplementary*

VALID FROM 03/04/2011

#### **Repeals**

**16** The statutory provisions set out in Schedule 4 are repealed to the extent specified in the second column of that Schedule.

#### Commencement Information

- I15** S. 16 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### **Commencement**

**17.**—(1) The preceding sections of this Act (and the Schedules) come into operation on such day or days as the Department for Employment and Learning may by order appoint.

(2) An order under subsection (1) may contain such transitional or saving provisions as that Department considers appropriate.

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**Subordinate Legislation Made**

- P1** [S. 17\(1\)](#) power partly exercised: 3.4.2011 appointed for specified provisions by [S.R. 2011/159](#), [art. 2](#) (with transitional provisions and savings in [art. 3](#), [Sch.](#))

**Short title**

- 18** This Act may be cited as the Employment Act (Northern Ireland) 2011.

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**Changes to legislation:**

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