

*These notes refer to the Employment Act (Northern Ireland)  
2011 (c.13) which received Royal Assent on 22nd March 2011*

# Employment Act (Northern Ireland) 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 4: Non-compliance with statutory Codes of Practice*

23. *Section 4* inserts into the Industrial Relations (Northern Ireland) Order 1992 (the Industrial Relations Order) a new Article 90AA. The Article applies to proceedings before an industrial tribunal relating to claims under provisions listed in the newly-inserted Schedule 4A of that Order and to proceedings before the Fair Employment Tribunal relating to claims under Article 38 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (discrimination and harassment). The Article provides that where an employer or employee fails to comply with a provision of a relevant Code of Practice, the tribunal may, where it considers it just and equitable, increase or reduce any award by up to 50%.
24. These arrangements replace the statutory workplace grievance procedures with a more straightforward mechanism allowing a tribunal discretion as to whether and to what extent it is appropriate to penalise a party for unreasonable failure to adhere to good practice steps. Those steps will be set out in a revised Labour Relations Agency Code of Practice.
25. An award cannot be adjusted under inserted Article 90AA in respect of the new grievance arrangements if the statutory disciplinary and dismissal procedures apply. This precludes the possibility of separate adjustments being made under the now differing grievance and disciplinary/dismissal mechanisms.
26. An Article 90AA adjustment will be applied before any adjustment is made under Article 27 or 28 of the 2003 Order. Articles 27 and 28 relate, respectively, to industrial tribunal and Fair Employment Tribunal proceedings. They provide that adjustments to awards can be made by a tribunal where an employer has failed to provide an adequate written statement of employment particulars.
27. Finally, the inserted Article empowers the Department for Employment and Learning, with the approval of the Northern Ireland Assembly, to modify the list of jurisdictions in Schedule 4A to the Industrial Relations Order. Schedule 4A to that Order is set out as Schedule 2 to the Act.