

*These notes refer to the Employment Act (Northern Ireland)
2016 (c.15) which received Royal Assent on 22nd April 2016*

Employment Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Industrial Tribunals

Section 1: Conciliation before and after institution of proceedings

This section inserts new Articles 20A, 20B and 20C into the Industrial Tribunals (Northern Ireland) Order 1996 (“ITO 1996”).

Article 20A provides that, other than in certain circumstances (paragraph (7)), a prospective claimant must first have submitted the details of their claim to the LRA before they can lodge the claim at an industrial tribunal. The kinds of proceedings to which this requirement applies are set out in Article 20(1) of the ITO 1996, and are referred to as “relevant proceedings” (see the amendment made by paragraph 3(3) of Schedule 1 to the Act).

Under paragraph (3) of Article 20A, an LRA conciliation officer will be required to try to achieve a settlement to the dispute, within a prescribed period, so that industrial tribunal proceedings can be avoided. Paragraph (4) of Article 20A provides that if, during that time, the conciliation officer concludes that a settlement is not possible, or the period expires with no settlement having been reached, the officer must issue a certificate to the prospective claimant and a claimant will not be able to lodge a claim with an industrial tribunal without such a certificate (paragraph (8)). The conciliation officer will, however, be able to continue to try to achieve a settlement to the dispute after the prescribed period has expired.

Paragraph (9) of Article 20A provides that, where prospective claimants are no longer employed by the employer, the conciliation officer may attempt to promote either the reinstatement or re-engagement of the individual or, if the individual does not want to be reinstated or re-engaged, or this is not practicable, attempt to achieve an agreement between the parties on the level of compensation to be paid by the employer.

Paragraphs (11) and (12) of Article 20A give the Department the power to make any industrial tribunal procedure regulations which are necessary for the operation of the early conciliation process.

Article 20B places an additional duty on the LRA to promote settlement in certain cases in which the duty under Article 20A does not apply. Paragraph (3) of Article 20B requires an LRA conciliation officer to try to achieve a settlement in a dispute where a person contacts the LRA requesting the services of a conciliation officer in a matter that might otherwise result in industrial tribunal proceedings against them even though the prospective claimant has not contacted the LRA. Paragraph (2) of Article 20B requires the conciliation officer to try to achieve a settlement in a dispute where the prospective claimant contacts them, even where that person is exempted by virtue of Article 20A(7) from the requirement to provide information to the LRA.

Currently, Article 20(3) of the ITO 1996 provides a discretionary power for the LRA to provide pre-claim conciliation to parties in an employment dispute, which could be the subject of tribunal proceedings, where either party requests it and where the conciliator believes that there is a reasonable prospect of a settlement being reached.

Article 20C places a further duty on the LRA to seek to promote settlement in certain cases where proceedings have already been instituted. This ensures that even where cases have progressed to industrial tribunal, the LRA conciliation officer may continue to offer support to the parties to enable them to reach an agreed settlement.

Section 2: Extension of limitation periods to allow conciliation

This section gives effect to Schedule 2, which sets out how the relevant time limits for bringing a claim to an industrial tribunal will be extended where necessary to provide sufficient time for early conciliation to take place and to ensure that the claimant is not disadvantaged.

Section 3: Extended power to define “relevant proceedings” for conciliation purposes

This section amends Article 20 of the ITO 1996 to provide that orders made by the Department may add to or remove proceedings from the list in Article 20(1) of the ITO 1996.

Orders which add proceedings to the list may also amend the applicable time limit in any relevant statutory provision.

Where the order removes proceedings from the list, consequential changes can be made to any extension to the time limit which is provided in any relevant statutory provision.

Section 4: Power to require party to proceedings to pay deposit

This section amends Article 11 of the ITO 1996 to provide the Department with the power to prescribe by regulations requirements, in addition to those already in statute, which parties may be required to meet as a condition of continuing to participate in particular IT proceedings.

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IT procedure regulations currently require a party to pay a deposit where their case is considered to have little reasonable prospect of success. These regulations are under review, and the enabling power will allow the Department to legislate in response to the relevant public consultation, once concluded.

Subsection (2) amends Article 25 of the ITO 1996 so that regulations which make use of the enabling power are to be subject to the draft affirmative Assembly procedure.