

*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

Fair Employment Tribunal

Section 5: Conciliation before and after complaint to Fair Employment Tribunal

This section inserts new Articles 88ZA and 88ZB into the Fair Employment and Treatment (Northern Ireland) Order 1998 (“FETO 1998”). Its provisions are comparable to those in section 1.

Article 88ZA 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 the FET. Under paragraph (3) of Article 88ZA, an LRA conciliation officer will be required to try to achieve a settlement to the dispute, within a prescribed period, so that FET proceedings can be avoided. Paragraph (4) of Article 88ZA 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 the FET without such a certificate (paragraph (8)). The conciliation officer will, however, be able to continue to try to achieve a settlement of the dispute after the prescribed period has expired.

Paragraphs (10) and (11) of Article 88ZA give the Department the power to make any FET procedure regulations which are necessary for the operation of the early conciliation process.

Article 88ZB places an additional duty on the LRA to promote settlement in certain cases in which the duty under Article 88ZA does not apply. Paragraph (3) of Article 88ZB 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 FET proceedings against them even though the prospective claimant has not contacted the LRA. Paragraph (2) of Article 88ZB requires the conciliation officer to seek to promote a settlement in a dispute where the prospective claimant contacts the Agency, even where that person is exempted by virtue of Article 88ZA(7) from the requirement to provide information to the LRA.

Currently, Article 88(3) of the FETO 1998 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 88ZC 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 the FET, the LRA conciliation officer may continue to offer support to the parties to enable them to reach an agreed settlement.

Section 6: Extension of time limit to allow conciliation

This section inserts Article 46B into the FETO 1998. This sets out how the relevant time limits for bringing a claim before the FET will be extended where necessary to provide sufficient time for early conciliation to take place and to ensure that the claimant is not disadvantaged.

Comparable provisions extending time limits in respect of industrial tribunal matters are contained within Schedule 2.

Section 7: Power to require party to proceedings to pay deposit

This section, which is comparable to section 4, amends Article 84B of the FETO 1998 to provide the Department with the power to prescribe by regulations other requirements in addition to those already in statute, which parties may be required to meet as a condition of continuing to participate in particular FET proceedings.

FET 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 104 of the FETO 1998 so that regulations which make use of the enabling power are to be subject to the draft affirmative Assembly procedure.