
STATUTORY INSTRUMENTS

1993 No. 2668

The Industrial Relations (Northern Ireland) Order 1993

Other employment matters

Repeal of Part III of Wages (Northern Ireland) Order 1988

13. Part III of the Wages (Northern Ireland) Order 1988(1) (which provides for statutory minimum remuneration for certain workers in accordance with wages orders made by wages councils) shall cease to have effect.

Constitution of industrial tribunals

14. After Article 58 of the No. 1 Order there shall be inserted—

“Constitution of industrial tribunals

58A.—(1) Subject to the following provisions of this Article, proceedings before an industrial tribunal shall be heard by—

- (a) the person who, in accordance with industrial tribunal regulations, is the chairman; and
- (b) two other members, or (with the consent of the parties) one other member, selected as the other members (or member) in accordance with such regulations.

(2) Subject to paragraph (5), the proceedings to which paragraph (3) applies shall be heard by the person specified in paragraph (1)(a) alone.

(3) This paragraph applies to—

- (a) proceedings on an application under Article 39, 40A or 41 of this Order;
- (b) proceedings on a complaint under Article 44 of this Order or under Article 7 of the Wages (Northern Ireland) Order 1988;
- (c) proceedings in respect of which an industrial tribunal has jurisdiction by virtue of an order under Article 57 of the No. 2 Order;
- (d) proceedings in which the parties have given their written consent to the proceedings being heard in accordance with paragraph (2) (whether or not they have subsequently withdrawn it);
- (e) proceedings in which the person bringing the proceedings has given written notice withdrawing the case; and
- (f) proceedings in which the person (or, where more than one, each of the persons) against whom the proceedings are brought does not, or has ceased to, contest the case.

(4) The Department may by order amend the provisions of paragraph (3).

(5) Proceedings to which paragraph (3) applies shall be heard in accordance with paragraph (1) if a person who, in accordance with industrial tribunal regulations, may be the chairman of an industrial tribunal, having regard to—

- (a) whether there is a likelihood of a dispute arising on the facts which makes it desirable for the proceedings to be heard in accordance with paragraph (1);
- (b) whether there is a likelihood of an issue of law arising which would make it desirable for the proceedings to be heard in accordance with paragraph (2);
- (c) any views of any of the parties as to whether or not the proceedings ought to be heard in accordance with either of those paragraphs; and
- (d) whether there are other proceedings which might be heard concurrently but which are not proceedings to which paragraph (3) applies,

decides (at any stage of the proceedings) that the proceedings are to be heard in accordance with paragraph (1).

(6) Regulations made under Article 59 may provide that in such circumstances as the regulations may specify any act required or authorised by the regulations to be done by an industrial tribunal may be done by the person specified in paragraph (1)(a) alone.

(7) Where the Secretary of State so directs in relation to any proceedings on grounds of national security, the proceedings shall be heard and determined, and any act required or authorised by regulations made under Article 59 to be done by an industrial tribunal in relation to the proceedings shall be done, by the President of Industrial Tribunals and the Fair Employment Tribunal or a person nominated under section 3(6) of the Fair Employment (Northern Ireland) Act 1989⁽²⁾ to discharge the functions of the President, alone.

(8) In this Article “industrial tribunal regulations” means regulations under Article 30 of the Industrial Training (Northern Ireland) Order 1984⁽³⁾ (constitution of industrial tribunals).”.

Extension of power to confer on industrial tribunals jurisdiction in respect of contracts of employment, etc.

15.—(1) Article 57 of the No. 2 Order (power to confer on industrial tribunals jurisdiction in respect of claims for damages for breach of contract of employment, etc.) shall be amended in accordance with paragraphs (2) to (4).

(2) For paragraph (1) there shall be substituted—

“(1) The Secretary of State may by order provide that proceedings in respect of—

- (a) any claim to which this Article applies; or
- (b) any such claim of a description specified in the order,

may, subject to such exceptions (if any) as may be specified in the order, be brought before an industrial tribunal.”.

(3) For paragraph (3) there shall be substituted—

“(3) This Article does not apply to a claim for damages, or for a sum due, in respect of personal injuries.”.

(4) After paragraph (4) there shall be inserted—

“(4A) An order under this Article may provide that an industrial tribunal shall not in proceedings in respect of a claim, or a number of claims relating to the same contract, order the payment of an amount exceeding such sum as may be specified in the order as the

(2) 1989 c. 32

(3) 1984 NI 9

maximum amount which a tribunal may order to be paid in relation to a claim or in relation to a contract.”.

Agreements not to take proceedings before industrial tribunals

16.—(1) Article 78 of the No. 1 Order (restrictions on contracting out) shall be amended in accordance with paragraphs (2) and (3).

(2) In paragraph (2) at the end there shall be added—

“(f) to any agreement to refrain from instituting or continuing any proceedings, other than excepted proceedings, specified in Article 62(1)(a) or (b) before an industrial tribunal if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement.”.

(3) After paragraph (2) there shall be added—

“(3) The proceedings excepted from paragraph (2)(f) are proceedings on a complaint of non-compliance with Article 49.

(4) The conditions regulating compromise agreements under this Order are that—

- (a) the agreement must be in writing;
- (b) the agreement must relate to the particular complaint;
- (c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the agreement must identify the adviser; and
- (f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.

(5) In paragraph (4)—

“independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

“qualified lawyer” means—

- (a) a barrister, whether in practice as such or employed to give legal advice; or
- (b) a solicitor of the Supreme Court who holds a practising certificate.

(6) For the purposes of paragraph (5) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

(4) Schedule 4 shall have effect for making corresponding amendments in the Sex Discrimination (Northern Ireland) Order 1976⁽⁴⁾, the No. 2 Order, the Wages (Northern Ireland) Order 1988⁽⁵⁾ and the Industrial Relations (Northern Ireland) Order 1992⁽⁶⁾.

(4) 1976 NI 15
(5) 1988 NI 7
(6) 1992 NI 5

Restriction of publicity in cases involving sexual misconduct

17.—(1) Article 59 of the No. 1 Order (regulations as to industrial tribunal procedure) shall be amended in accordance with paragraphs (2) to (4).

(2) After paragraph (6) there shall be inserted—

“(6A) The regulations may include provision—

- (a) 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;
- (b) for cases involving allegations of sexual misconduct, 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.

(6B) In this Article—

“identifying matter”, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation;

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990⁽⁷⁾;

“restricted reporting order” means an order prohibiting the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland;

“sexual misconduct” means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed;

“sexual offence” means—

- (a) rape, aiding, abetting, counselling or procuring rape or attempted rape, incitement to rape, conspiracy to rape or burglary with intent to rape;
- (b) any offence under any of the following statutory provisions, namely—
 - (i) section 52, 61 or 62 of the Offences Against the Person Act 1861⁽⁸⁾;
 - (ii) section 3, 4 or 5 of the Criminal Law Amendment Act 1885⁽⁹⁾;
 - (iii) section 1 or 2 of the Punishment of Incest Act 1908⁽¹⁰⁾;
 - (iv) section 22 of the Children and Young Persons Act (Northern Ireland) 1968⁽¹¹⁾;
 - (v) Article 9 of the Criminal Justice (Northern Ireland) Order 1980⁽¹²⁾;
 - (vi) Article 122(1)(a) or (b) or 123 of the Mental Health (Northern Ireland) Order 1986⁽¹³⁾;

⁽⁷⁾ 1990 c. 42

⁽⁸⁾ 1861 c. 100

⁽⁹⁾ 1885 c. 69

⁽¹⁰⁾ 1908 c. 45

⁽¹¹⁾ 1968 c. 34 (N.I.)

⁽¹²⁾ 1980 NI 6

⁽¹³⁾ 1986 NI 4

(c) any attempt to commit any of the offences mentioned in sub-paragraph (a) or (b);
“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.”.

(3) In paragraph (8) after the word “send” there shall be inserted the words “(subject to any regulations under paragraph (6A)(a))”.

(4) At the end there shall be added the following paragraphs—

“(12) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale—

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of publication in any other form, the person publishing the matter; and
- (c) in the case of matter included in a relevant programme—
 - (i) any body corporate engaged in providing the service in which the programme is included; and
 - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(13) Where a person is charged with an offence under paragraph (12) it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.

(14) For the purposes of paragraph (12), section 20(2) of the Interpretation Act (Northern Ireland) 1954⁽¹⁴⁾ applies with the omission of the words “the liability of whose members is limited” and, where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.

⁽¹⁴⁾ 1954 c. 33 (N.I.)