STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XIII

PROCEDURE FOR HANDLING REDUNDANCIES

Duty of employer to consult representatives of employees

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216.—(1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be so dismissed.

(2) The consultation shall begin in good time and in any event—

(a) where the employer is proposing to dismiss 100 or more employees as mentioned in paragraph (1), at least 90 days, and

(b) otherwise, at least 30 days,

before the first of the dismissals takes effect.

(3) For the purposes of this Article the appropriate representatives of any employees are—

(a) employee representatives elected by them, or

(b) if the employees are of a description in respect of which an independent trade union is recognised by the employer, representatives of the trade union,

or (in the case of employees who both elect employee representatives and are of such a description) either employee representatives elected by them or representatives of the trade union, as the employer chooses.

(4) The consultation shall include consultation about ways of—

(a) avoiding the dismissals,

(b) reducing the numbers of employees to be dismissed, and

(c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.

(5) In determining how many employees an employer is proposing to dismiss as redundant no account shall be taken of employees in respect of whose proposed dismissals consultation has already begun.

(6) For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives—

(a) the reasons for his proposals,

(b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant,

(c) the total number of employees of any such description employed by the employer at the establishment in question,

(d) the proposed method of selecting the employees who may be dismissed,

(e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect,

(f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any statutory provision) to employees who may be dismissed.

(7) That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.

(8) The employer shall allow the appropriate representatives access to the employees whom it is proposed to dismiss as redundant and shall afford to those representatives such accommodation and other facilities as may be appropriate.

(9) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of paragraph (2), (4) or (6), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

(10) Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.

(11) Where—

(a) the employer has invited any of the employees who may be dismissed to elect employee representatives, and

(b) the invitation was issued long enough before the time when the consultation is required by paragraph (2)(a) or (b) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this Article in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.

(12) This Article does not confer any rights on a trade union, a representative or an employee except as provided by Articles 217 to 220.

Complaint and protective award

217.—(1) Where an employer has failed to comply with any requirement of Article 216, a complaint may be presented to an industrial tribunal on that ground—

(a) in the case of a failure relating to employee representatives, by any of the employee representatives to whom the failure related,

(b) in the case of a failure relating to representatives of a trade union, by the trade union, and

(c) in any other case, by any of the employees who have been or may be dismissed as redundant.

(2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.

(3) A protective award is an award in respect of one or more descriptions of employees—

(a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and

(b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of Article 216,

ordering the employer to pay remuneration for the protected period.

(4) The protected period—

(a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and

(b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of Article 216;

but shall not exceed 90 days in a case falling within Article 216(2)(a) or 30 days in a case falling within Article 216(2)(b).

(5) An industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

(a) before the date on which the last of the dismissals to which the complaint relates takes effect, or

(b) during the period of three months beginning with that date, or

(c) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented during that period of three months.

(6) If on a complaint under this Article a question arises—

(a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of Article 216, or

(b) whether he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,

it is for the employer to show that there were and that he did.

Entitlement under protective award

218.—(1) Where an industrial tribunal has made a protective award, every employee of a description to which the award relates is entitled, subject to the following provisions and to Article 219, to be paid remuneration by his employer for the protected period.

(2) The rate of remuneration payable is a week's pay for each week of the period; and remuneration in respect of a period less than one week shall be calculated by reducing proportionately the amount of a week's pay.

(3) An employee is not entitled to remuneration under a protective award in respect of a period during which he is employed by the employer unless he would be entitled to be paid by the employer in respect of that period—

(a) by virtue of his contract of employment, or

(b) by virtue of Articles 119 to 123 (rights of employee in period of notice),

if that period fell within the period of notice required to be given by Article 118(1).

(4) If an employee of a description to which a protective award relates dies during the protected period, the award has effect in his case as if the protected period ended on his death.

Termination of employment during protected period

219.—(1) Where the employee is employed by the employer during the protected period and—

(a) he is fairly dismissed by his employer otherwise than as redundant, or

(b) he unreasonably terminates the contract of employment,

then, subject to the following provisions, he is not entitled to remuneration under the protective award in respect of any period during which but for that dismissal or termination he would have been employed.

(2) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of his employment under the previous contract) to renew his contract of employment, or to re-engage him under a new contract, so that the renewal or re-engagement would take effect before or during the protected period, and either—

(a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract, or

(b) the offer constitutes an offer of suitable employment in relation to the employee,

the following paragraphs have effect.

(3) If the employee unreasonably refuses the offer, he is not entitled to remuneration under the protective award in respect of a period during which but for that refusal he would have been employed.

(4) If the employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in paragraph (2)(b), there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this Article).

(5) The trial period begins with the ending of his employment under the previous contract and ends with the expiration of the period of four weeks beginning with the date on which he starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with paragraph (6) for the purpose of retraining the employee for employment under that contract.

(6) Any such agreement—

(a) shall be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract,

(b) shall be in writing,

(c) shall specify the date of the end of the trial period, and

(d) shall specify the terms and conditions of employment which will apply in the employee's case after the end of that period.

(7) If during the trial period—

(a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated, or

(b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,

the employee remains entitled under the protective award unless, in a case falling within sub-paragraph (a), he acted unreasonably in terminating or giving notice to terminate the contract.

Complaint by employee to industrial tribunal

220.—(1) An employee may present a complaint to an industrial tribunal on the ground that he is an employee of a description to which a protective award relates and that his employer has failed, wholly or in part, to pay him remuneration under the award.

(2) An industrial tribunal shall not entertain a complaint under this Article unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the day (or, if the complaint relates to more than one day, the last of the days) in respect of which the complaint is made of failure to pay remuneration, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where the tribunal finds a complaint under this Article well-founded it shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

Duty of employer to notify Department

Duty of employer to notify Department of certain redundancies

221.—(1) An employer proposing to dismiss as redundant 100 or more employees at one establishment within a period of 90 days or less shall notify the Department, in writing, of his proposal at least 90 days before the first of those dismissals takes effect.

(2) An employer proposing to dismiss as redundant 20 or more employees at one establishment within such a period shall notify the Department, in writing, of his proposal at least 30 days before the first of those dismissals takes effect.

(3) In determining how many employees an employer is proposing to dismiss as redundant within the period mentioned in paragraph (1) or (2), no account shall be taken of employees in respect of whose proposed dismissal notice has already been given to the Department.

(4) A notice under this Article shall—

(a) be given to the Department by delivery to the Department or by sending it by post to the Department, at such address as the Department may direct in relation to the establishment where the employees proposed to be dismissed are employed,

(b) where there are representatives to be consulted under Article 216, identify them and state the date when consultation with them under that Article began, and

(c) be in such form and contain such particulars, in addition to those required by sub-paragraph (b), as the Department may direct.

(5) After receiving a notice under this Article from an employer the Department may by written notice require the employer to give it such further information as may be specified in the notice.

(6) Where there are representatives to be consulted under Article 216 the employer shall give to each of them a copy of any notice given under paragraph (1) or (2).

The copy shall be delivered to them or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.

(7) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of paragraphs (1) to (6), he shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances.

(8) Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.

Offence of failure to notify

222.—(1) An employer who fails to give notice to the Department in accordance with Article 221 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) s for such an offence shall be instituted only by or with the consent of the Department or by an officer authorised for that purpose by special or general directions of the Department.

(3) An officer so authorised may, although not of counsel or a solicitor, prosecute or conduct proceedings for such an offence before a magistrates' court.

Supplementary provisions

Construction of references to dismissal as redundant etc.

223.—(1) In this Part references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.

(2) For the purposes of any proceedings under this Part, where an employee is or is proposed to be dismissed it shall be presumed, -unless the contrary is proved, that he is or is proposed to be dismissed as redundant.

Construction of references to representatives

224.—(1) For the purposes of this Part persons are employee representatives if—

(a) they have been elected by employees for the specific purpose of being consulted by their employer about dismissals proposed by him, or

(b) having been elected by employees (whether before or after dismissals have been proposed by their employer) otherwise than for that specific purpose, it is appropriate (having regard to the purposes for which were elected) for the employer to consult them about dismissals proposed by him,

and (in either case) they when they are elected.

(2) References in this relation to an employer, by the trade union to employer. are employed by the employer at the time Part to representatives of a trade union, in are to officials or other persons authorised carry on collective bargaining with the

Power to vary provisions

225. The Department may by order vary—

(a) the provisions of Articles 216(1) and (2) and 221(1) (requirements as to consultation and notification), and

(b) the periods referred to at the end of Article 217(4) (maximum protected period);

but no such order shall be made which has the effect of reducing to less than 30 days the periods referred to in Articles 216(2) and 221(1) as the periods which must elapse before the first of the dismissals takes effect.

Power to adapt provisions in case of collective agreement

226.—(1) This Article applies where there is in force a collective agreement which establishes—

(a) arrangements for providing alternative employment for employees to whom the agreement relates if they are dismissed as redundant by an employer to whom it relates, or

(b) arrangements for the dismissal of employees as redundant.

(2) On the application of all the parties to the agreement the Department may, if it is satisfied having regard to the provisions of the agreement that the arrangements are on the whole at least as favourable to those employees as the foregoing provisions of this Part, by order adapt, modify or exclude any of those provisions both in their application to all or any of those employees and in their application to any other employees of any such employer.

(3) The Department shall not make such an order unless the agreement—

(a) provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee to whom the agreement relates claims that any employer or other person to whom it relates has not complied with the provisions of the agreement, and

(b) provides that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached,

or indicates that any such employee may present a complaint to an industrial tribunal that any such employer or other person has not complied with those provisions.

(4) An order under this Article may confer on an industrial tribunal to which a complaint is presented as mentioned in paragraph (3) such powers and duties as the Department considers appropriate.

(5) An order under this Article may be varied or revoked by a subsequent order thereunder either in pursuance of an application made by all or any of the parties to the agreement in question or without any such application.