
STATUTORY INSTRUMENTS

1998 No. 1265

The Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998.

(2) This Order shall come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions and savings as appear to the Department to be appropriate.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the Department” means the Department of Economic Development.

PART II

INDUSTRIAL TRIBUNALS

Hearings etc.

Determinations without a hearing or full hearing

3. In Article 9 of the Industrial Tribunals (Northern Ireland) Order 1996 (which authorises the making of industrial tribunal procedure regulations), after paragraph (3) there shall be inserted—

“(3A) Industrial tribunal procedure regulations may authorise the determination of proceedings without any hearing (and in private) where the parties have given their written consent (whether or not they have subsequently withdrawn it).

(3B) Industrial tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom the proceedings are brought (or his or their representatives) where—

(a) the person (or, where more than one, each of the persons) against whom the proceedings are brought has done nothing to contest the case, or

- (b) it appears from the application made by the person (or, where more than one, each of the persons) bringing the proceedings that he is not (or they are not) seeking any relief which an industrial tribunal has power to give or that he is not (or they are not) entitled to any such relief.

(3C) Industrial tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom, and the person or persons against whom, the proceedings are brought (or his or their representatives) where—

- (a) an industrial tribunal is on undisputed facts bound by the decision of a court in another case to dismiss the case of the person or persons by whom, or of the person or persons against whom, the proceedings are brought, or
- (b) the proceedings relate only to a preliminary issue which may be heard and determined in accordance with regulations under Article 11(4).”.

Hearings etc. by chairman alone

4.—(1) In Article 6 of the Industrial Tribunals (Northern Ireland) Order 1996 (which makes provision about the composition of an industrial tribunal), paragraph (3) (which specifies the tribunal proceedings which are to be heard by the chairman alone unless he decides otherwise) shall be amended in accordance with paragraphs (2) to (4).

(2) For sub-paragraph (a) (which specifies proceedings under the Employment Rights (Northern Ireland) Order 1996) there shall be substituted—

- “(a) proceedings—
 - (i) on an application under Article 163, 166 or 167 of the Employment Rights Order (interim relief orders);
 - (ii) on a complaint under Article 55 (protection of wages), Article 66 (guarantee payment), Article 220 (protective award) or Article 233 (payment on insolvency of employer) of that Order;
 - (iii) on a complaint under Article 102(1) of that Order relating to Article 96 (suspension from work on medical grounds) of that Order;
 - (iv) on a reference under Article 43 (statement of particulars of employment and itemised pay statement), Article 198 (redundancy payment) or Article 205 (liability for employer’s payment) of that Order; or
 - (v) for an appointment under Article 248(4) (institution or continuance of tribunal proceedings where employee is deceased) of that Order;”.

(3) After sub-paragraph (a) there shall be inserted—

- “(aa) proceedings on a complaint under Article 36 (employer deducting unauthorised or excessive union subscription) or Article 61 (employer deducting or refusing to deduct union contribution) of the Trade Union and Labour Relations (Northern Ireland) Order 1995;
- (ab) proceedings on a complaint under regulation 11(5) of the Transfer of Undertakings (Protection of Employment) Regulations 1981;”.

(4) Sub-paragraph (e) (which specifies proceedings in which the person bringing the proceedings has given written notice withdrawing the case), apart from the word “and”, shall cease to have effect.

(5) After paragraph (6) of that Article (which makes provision for industrial tribunal procedure regulations to provide that any act required or authorised by the regulations to be done by a tribunal may be done by the chairman alone) there shall be inserted—

“(6A) Paragraph (6) in particular enables industrial tribunal procedure regulations to provide that—

- (a) the determination of proceedings in accordance with regulations under Article 9(3A), (3B) or (3C)(a),
- (b) the carrying-out of pre-hearing reviews in accordance with regulations under paragraph (1) of Article 11 (including the exercise of powers in connection with such reviews in accordance with regulations under sub-paragraph (b) of that paragraph), or
- (c) the hearing and determination of a preliminary issue in accordance with regulations under Article 11(4) (where it involves hearing witnesses other than the parties or their representatives as well as where, in accordance with regulations under Article 9(3C)(b), it does not),

may be done by the person mentioned in paragraph (1)(a) alone.”.

Hearings by chairman and one other member

5. In Article 6(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (which provides that, subject to the following provisions of that Article, industrial tribunal proceedings are to be heard by the chairman and either two other members or, with the consent of the parties, one other member), for sub-paragraph (b) there shall be substituted—

- “(b) two other members selected as the other members in accordance with regulations so made or, with appropriate consent, one other member selected as the other member in accordance with regulations so made;

and in sub-paragraph (b) “appropriate consent” means either consent given at the beginning of the hearing by such of the parties as are then present in person or represented, or consent given by each of the parties.”.

Other provisions

Legal officers

6. After paragraph (6A) of Article 6 of the Industrial Tribunals (Northern Ireland) Order 1996 (which is inserted by Article 4(5)) there shall be inserted—

“(6B) Industrial tribunal procedure regulations may (subject to paragraph (6C)) also provide that any act which—

- (a) by virtue of paragraph (6) may be done by the person mentioned in paragraph (1) (a) alone, and
- (b) is of a description specified by the regulations for the purposes of this paragraph, may be done by a person appointed as a legal officer in accordance with regulations under Article 3(1); and any act so done shall be treated as done by an industrial tribunal.

(6C) But regulations under paragraph (6B) may not specify—

- (a) the determination of any proceedings, other than proceedings in which the parties have agreed the terms of the determination or in which the person bringing the proceedings has given notice of the withdrawal of the case, or
- (b) the carrying-out of pre-hearing reviews in accordance with regulations under Article 11(1).”.

Jurisdiction in cases about political fund contributions

7. For Article 61 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (which provides that a person who alleges that his employer has failed to comply with Article 60 of that Order by wrongly deducting a political fund contribution or refusing to deduct union dues may make an application to a county court) there shall be substituted—

“Complaint in respect of employer’s failure

61.—(1) A person who claims his employer has failed to comply with Article 60 in deducting or refusing to deduct any amount from emoluments payable to him may present a complaint to an industrial tribunal.

(2) A tribunal shall not consider a complaint under paragraph (1) unless it is presented—

- (a) within the period of three months beginning with the date of the payment of the emoluments or (if the complaint relates to more than one payment) the last of the payments, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

(3) Where on a complaint under paragraph (1) arising out of paragraph (3) (refusal to deduct union dues) of Article 60 the question arises whether the employer’s refusal to deduct an amount was attributable to the giving of the certificate or was otherwise connected with the duty imposed by paragraph (1) of that Article, it is for the employer to satisfy the tribunal that it was not.

(4) Where a tribunal finds that a complaint under paragraph (1) is well-founded—

- (a) it shall make a declaration to that effect and, where the complaint arises out of paragraph (1) of Article 60, order the employer to pay to the complainant the amount deducted in contravention of that paragraph less any part of that amount already paid to him by the employer, and
- (b) it may, if it considers it appropriate to do so in order to prevent a repetition of the failure, make an order requiring the employer to take, within a specified time, the steps specified in the order in relation to emoluments payable by him to the complainant.

(5) A person who claims his employer has failed to comply with an order made under paragraph (4)(b) on a complaint presented by him may present a further complaint to an industrial tribunal; but only one complaint may be presented under this paragraph in relation to any order.

(6) A tribunal shall not consider a complaint under paragraph (5) unless it is presented—

- (a) after the end of the period of four weeks beginning with the date of the order, but
- (b) before the end of the period of six months beginning with that date.

(7) Where on a complaint under paragraph (5) a tribunal finds that an employer has, without reasonable excuse, failed to comply with an order made under paragraph (4)(b), it shall order the employer to pay to the complainant an amount equal to two weeks’ pay.

(8) Chapter IV of Part I of the Employment Rights (Northern Ireland) Order 1996 (calculation of a week’s pay) applies for the purposes of paragraph (7) with the substitution for Article 21 of the following—

“For the purposes of this Chapter in its application to paragraph (7) of Article 61 of the Trade Union and Labour Relations Order, the calculation date is the date of

the payment, or (if more than one) the last of the payments, to which the complaint related.”.”.

PART III

OTHER METHODS OF DISPUTE RESOLUTION

Arbitration

Labour Relations Agency arbitration scheme

8. After Article 84 of the Industrial Relations (Northern Ireland) Order 1992 there shall be inserted—

“Arbitration scheme for unfair dismissal cases etc.

84A.—(1) The Agency may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an industrial tribunal arising out of a contravention or alleged contravention of—

- (a) Part XI of the Employment Rights (Northern Ireland) Order 1996 (unfair dismissal); or
- (b) any statutory provision specified in an order made by the Department.

(2) When the Agency has prepared such a scheme it shall submit a draft of the scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the scheme, and
- (b) making provision for it to come into effect.

(3) The Agency may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the revised scheme, and
- (b) making provision for it to come into effect.

(4) The Agency may take any steps appropriate for promoting awareness of a scheme prepared under this Article.

(5) Where the parties to any dispute within paragraph (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this Article, the Agency shall refer the dispute to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).

(6) Nothing in the Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this Article except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.

(7) Where a scheme set out in an order under this Article includes provision for the making of re-employment orders in arbitrations conducted in accordance with the scheme, the order setting out the scheme may require industrial tribunals to enforce such orders—

- (a) in accordance with Article 151 of the Employment Rights (Northern Ireland) Order 1996 (enforcement by award of compensation), or
- (b) in accordance with that Article as modified by the order.

For this purpose “re-employment orders” means orders requiring that persons found to have been unfairly dismissed be reinstated, re-engaged or otherwise re-employed.

(8) An order under this Article setting out a scheme may provide that, in the case of disputes within paragraph (1)(a), such part of an award made in accordance with the scheme as is specified by the order shall be treated as a basic award of compensation for unfair dismissal for the purposes of Article 229(1)(d) of the Employment Rights (Northern Ireland) Order 1996 (which specifies such an award as a debt which the Department must satisfy if the employer has become insolvent).

(9) No order shall be made under paragraph (1)(b) unless a draft of the order has been laid before and approved by resolution of the Assembly.”.

Effect of arbitration agreements

9.—(1) In Article 77 of the Sex Discrimination (Northern Ireland) Order 1976 (paragraph (3) of which prohibits contracting out of the provisions of that Order or the Equal Pay Act (Northern Ireland) 1970, but subject to exceptions specified in paragraph (4)), after paragraph (4C) there shall be added—

- “(4D) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of paragraph (4)(a) and
 - (aa) as being a contract settling a complaint if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
 - (b) shall be regarded for those purposes as neither being nor including such a contract in any other case.”.

(2) In Article 146 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (paragraph (1) of which prohibits contracting out of the provisions of that Order, but subject to exceptions specified in paragraphs (2) and (3)), after paragraph (6) there shall be added—

- “(7) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of paragraphs (2) and (3) as being an agreement to refrain from instituting or continuing proceedings if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
 - (b) shall be regarded for those purposes as neither being nor including such an agreement in any other case.”.

(3) In section 9 of the Disability Discrimination Act 1995 (subsection (1) of which prohibits contracting out of the provisions of Part II of that Act, but subject to exceptions specified in subsection (2)), after subsection (5) there shall be added—

- “(6) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of subsection (2) as being an agreement not to institute, or an agreement not to continue, proceedings if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992, and

- (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded as neither being nor including such an agreement in any other case.”.

(4) In Article 245 of the Employment Rights (Northern Ireland) Order 1996 (paragraph (1) of which prohibits contracting out of the provisions of that Order, but subject to exceptions specified in paragraph (2)), after paragraph (4) there shall be added—

- “(5) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of paragraph (2)(e) and (f) as being an agreement to refrain from instituting or continuing proceedings if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992, and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
 - (b) shall be regarded as neither being nor including such an agreement in any other case.”.

(5) In Article 68 of the Race Relations (Northern Ireland) Order 1997 (paragraph (5) of which prohibits contracting out of the provisions of that Order, but subject to exceptions specified in paragraph (6)), after paragraph (9) there shall be added—

- “(10) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of paragraph (6)(a) and
 - (b) as being a contract settling a complaint if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
 - (b) shall be regarded for those purposes as neither being nor including such a contract in any other case.”.

Compromise agreements

Advice of non-lawyer

10.—(1) In each of the provisions specified in paragraph (2) (which provide that, for a compromise agreement to be valid, independent legal advice must have been received from a qualified lawyer), for “independent legal advice from a qualified lawyer” there shall be substituted “advice from a relevant independent adviser”.

- (2) The provisions referred to in paragraph (1) are—
- (a) Article 77(4A)(c) of the Sex Discrimination (Northern Ireland) Order 1976;
 - (b) Article 146(4)(c) of the Trade Union and Labour Relations (Northern Ireland) Order 1995;
 - (c) section 9(3)(a) of the Disability Discrimination Act 1995;
 - (d) Article 245(3)(c) of the Employment Rights (Northern Ireland) Order 1996; and
 - (e) Article 68(7)(c) of the Race Relations (Northern Ireland) Order 1997.

Indemnity cover

11.—(1) In each of the provisions specified in paragraph (2) (which provide that, for a compromise agreement to be valid, there must have been in force a policy of insurance covering the risk of a claim against the person who provided the advice about the agreement), for “policy of insurance” there shall be substituted “contract of insurance, or an indemnity provided for members of a profession or professional body.”

(2) The provisions referred to in paragraph (1) are—

- (a) Article 77(4A)(d) of the Sex Discrimination (Northern Ireland) Order 1976;
- (b) Article 146(4)(d) of the Trade Union and Labour Relations (Northern Ireland) Order 1995;
- (c) section 9(3)(b) of the Disability Discrimination Act 1995;
- (d) Article 245(3)(d) of the Employment Rights (Northern Ireland) Order 1996; and
- (e) Article 68(7)(d) of the Race Relations (Northern Ireland) Order 1997;

*Other provisions***Settlements of redundancy cases**

12.—(1) In Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (which specifies the proceedings in relation to which the provisions about conciliation apply), in sub-paragraph (c) (proceedings under the Employment Rights (Northern Ireland) Order 1996) after head (ix) there shall be inserted—

“(ixa) Article 170 (redundancy payment);”.

(2) In Article 201(2) of the Employment Rights (Northern Ireland) Order 1996 (which defines “employer’s payment” for the purposes of the provisions requiring the Department to make a payment to an employee whose employer is liable to pay him an employer’s payment), after sub-paragraph (a) there shall be inserted—

“(aa) a payment which his employer is liable to make to him under an agreement to refrain from instituting or continuing proceedings for a contravention or alleged contravention of Article 170 which has effect by virtue of Article 245(2)(e) or (f), or”.

(3) In Article 203(1) of that Order (which specifies the amount which the Department is required to pay in respect of an employer’s payment), after sub-paragraph (a) there shall be inserted—

“(aa) where the employer’s payment to which the employee’s application under Article 201 relates is a payment which his employer is liable to make to him under an agreement having effect by virtue of Article 245(2)(e) or (f), is a sum equal to the amount of the employer’s payment or of any redundancy payment which the employer would have been liable to pay to the employee but for the agreement, whichever is less, and”.

Dismissal procedures agreements

13.—(1) In Article 142 of the Employment Rights (Northern Ireland) Order 1996 (which provides that the statutory right not to be unfairly dismissed does not apply to employees covered by a designated dismissal procedures agreement), for paragraph (2) (which provides that the statutory right nevertheless applies in the case of dismissals specified in certain statutory provisions) there shall be substituted—

“(2) But if the agreement includes provision that it does not apply to dismissals of particular descriptions, paragraph (1) does not apply in relation to a dismissal of any such description.”.

(2) In paragraph (3) of that Article (which specifies the matters as to which the Department must be satisfied before designating a dismissal procedures agreement), for sub-paragraph (e) (which requires a dismissal procedures agreement to provide for arbitration or independent adjudication where a decision cannot otherwise be reached) there shall be substituted—

- “(e) the agreement includes provision either for arbitration in every case or for—
- (i) arbitration where (by reason of equality of votes or for any other reason) a decision under the agreement cannot otherwise be reached, and
 - (ii) a right to submit to arbitration any question of law arising out of such a decision, and”.

(3) After paragraph (5) of that Article there shall be added—

“(6) Where an award is made under a designated dismissal procedures agreement it may be enforced, by leave of a county court, in the same manner as a judgment of the court to the same effect and, where leave is given, judgment may be entered in terms of the award.”.

(4) In Article 229 of the Employment Rights (Northern Ireland) Order 1996 (which specifies the debts which the Department must satisfy if an employer has become insolvent) in paragraph (1)(d) (which specifies a basic award of compensation for unfair dismissal payable by the employer), after “dismissal” there shall be inserted “or so much of an award under a designated dismissal procedures agreement as does not exceed any basic award of compensation for unfair dismissal to which the employee would be entitled but for the agreement”.

(5) The amendments made by paragraphs (1) and (2) do not affect any dismissal procedures agreement designated by the Department before those paragraphs come into operation.

PART IV

AWARDS OF COMPENSATION

Internal appeal procedures and unfair dismissal awards

14. After Article 162 of the Employment Rights (Northern Ireland) Order 1996 there shall be inserted—

“Internal appeal procedures

162A.—(1) Where in a case in which an award of compensation for unfair dismissal falls to be made under Article 146(4) or 151(3)(a) the tribunal finds that—

- (a) the employer provided a procedure for appealing against dismissal, and
- (b) the complainant was, at the time of the dismissal or within a reasonable period afterwards, given written notice stating that the employer provided the procedure and including details of it, but
- (c) the complainant did not appeal against the dismissal under the procedure (otherwise than because the employer prevented him from doing so),

the tribunal shall reduce the compensatory award included in the award of compensation for unfair dismissal by such amount (if any) as it considers just and equitable.

(2) Where in a case in which an award of compensation for unfair dismissal falls to be made under Article 146(4) or 151(3)(a) the tribunal finds that—

- (a) the employer provided a procedure for appealing against dismissal, but

(b) the employer prevented the complainant from appealing against the dismissal under the procedure,
the award of compensation for unfair dismissal shall include a supplementary award of such amount (if any) as the tribunal considers just and equitable.

(3) In determining the amount of a reduction under paragraph (1) or a supplementary award under paragraph (2) the tribunal shall have regard to all the circumstances of the case, including in particular the chances that an appeal under the procedure provided by the employer would have been successful.

(4) The amount of such a reduction or supplementary award shall not exceed the amount of two weeks' pay.”.

Acts which are both unfair dismissal and disability discrimination

15.—(1) In Article 151(6) of the Employment Rights (Northern Ireland) Order 1996 (which provides for a higher additional award for an unfairly dismissed employee who is not reinstated or re-engaged as ordered in a case where the dismissal is an act of discrimination within the meaning of other statutory provisions), at the end there shall be added

“and

(d) a dismissal which is an act of discrimination within the meaning of the Disability Discrimination Act 1995 which is unlawful by virtue of that Act.”.

(2) Article 160(1) of the Employment Rights (Northern Ireland) Order 1996 (which prohibits recovery under more than one provision in the case of an act which is both unfair dismissal and sex or race discrimination) shall be amended as follows.

(3) For sub-paragraph (b) there shall be substituted—

“(b) any one or more of the Sex Discrimination (Northern Ireland) Order 1976, the Disability Discrimination Act 1995 and the Race Relations (Northern Ireland) Order 1997.”.

(4) The words “two or three” shall cease to have effect.

(5) For the words “the other, or any of the others,” there shall be substituted “any other of them”.

PART V

AMENDMENTS AND REPEALS

Amendments and repeals

16. Schedule 1 (minor and consequential amendments) and Schedule 2 (repeals) shall have effect.

N.H. Nicholls
Clerk of the Privy Council