
STATUTORY INSTRUMENTS

1998 No. 1265

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

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any hearing (and in private) where the parties have given their written consent (whether or not they have subsequently withdrawn it).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.””.