
STATUTORY INSTRUMENTS

1998 No. 1265

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

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.”.