
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.”.

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.