
STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART V

MISCELLANEOUS

Equal pay: questionnaires

30.—(1) In the Equal Pay Act (Northern Ireland) 1970 (c. 32) after section 6A there shall be inserted—

“Questioning of employer

6B.—(1) For the purposes of this section—

- (a) a person who considers that she may have a claim under section 1 is referred to as “the complainant”, and
- (b) a person against whom the complainant may decide to make, or has made, a complaint under section 2(1) or 6A(3) is referred to as “the respondent”.

(2) With a view to helping a complainant to decide whether to institute proceedings and, if she does so, to formulate and present her case in the most effective manner, the Office shall by order prescribe—

- (a) forms by which the complainant may question the respondent on any matter which is or may be relevant, and
- (b) forms by which the respondent may if he so wishes reply to any questions.

(3) Where the complainant questions the respondent (whether in accordance with an order under subsection (2) or not), the question and any reply by the respondent (whether in accordance with such an order or not) shall, subject to the following provisions of this section, be admissible as evidence in any proceedings under section 2(1) or 6A(3).

(4) If in any proceedings under section 2(1) or 6A(3) it appears to the industrial tribunal that the complainant has questioned the respondent (whether in accordance with an order under subsection (2) or not) and that—

- (a) the respondent deliberately and without reasonable excuse omitted to reply within such period as the Office may by order prescribe, or
- (b) the respondent’s reply is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that the respondent has contravened a term modified or included by virtue of the complainant’s equality clause or corresponding term of service.

(5) Where the Office questions an employer in relation to whom it may decide to make, or has made, a reference under section 2(2), the question and any reply by the employer shall, subject to the following provisions of this section, be admissible as evidence in any proceedings under that provision.

(6) If in any proceedings on a reference under section 2(2) it appears to the industrial tribunal that the Office has questioned the employer to whom the reference relates and that—

- (a) the employer deliberately and without reasonable excuse omitted to reply within such period as the Office may by order prescribe, or
- (b) the employer's reply is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that the employer has contravened a term modified or included by virtue of the equality clause of the woman, or women, as respects whom the reference is made.

(7) The Office may by order—

- (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (3) or (5), and
- (b) prescribe the manner in which a question, and any reply, may be duly served.

(8) This section is without prejudice to any other statutory provision or rule of law regulating interlocutory and preliminary matters in proceedings before an industrial tribunal, and has effect subject to any statutory provision or rule of law regulating the admissibility of evidence in such proceedings.

(9) Orders under this section shall be subject to negative resolution.

(10) In this section "the Office" means the Office of the First Minister and deputy First Minister."

Union learning representatives

31.—(1) Part VII of the Employment Rights Order (time off work) shall be amended as follows.

(2) After Article 92 there shall be inserted—

“Time off for union learning representatives

92A.—(1) An employer shall permit an employee of his who is—

- (a) a member of an independent trade union recognised by the employer, and
- (b) a learning representative of the trade union,

to take time off during his working hours for any of the following purposes.

(2) The purposes are—

- (a) carrying on any of the following activities in relation to qualifying members of the trade union—
 - (i) analysing learning or training needs,
 - (ii) providing information and advice about learning or training matters,
 - (iii) arranging learning or training, and
 - (iv) promoting the value of learning or training,
- (b) consulting the employer about carrying on any such activities in relation to such members of the trade union,
- (c) preparing for any of the things mentioned in paragraphs (a) and (b).

(3) Paragraph (1) only applies if—

- (a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and
- (b) the training condition is met in relation to him.

- (4) The training condition is met if—
- (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in paragraph (2), and the trade union has given the employer notice in writing of that fact,
 - (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
 - (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.
- (5) Only one notice under paragraph (4)(b) may be given in respect of any one employee.
- (6) References in paragraph (4) to sufficient training to carry out the activities mentioned in paragraph (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by the Agency or the Department.
- (7) If an employer is required to permit an employee to take time off under paragraph (1), he shall also permit the employee to take time off during his working hours for the following purposes—
- (a) undergoing training which is relevant to his functions as a learning representative, and
 - (b) where the trade union has in the last six months given the employer notice under paragraph (4)(b) in relation to the employee, undergoing such training as is mentioned in paragraph (4)(a).
- (8) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by the Agency or the Department.
- (9) In paragraph (2)(a), the reference to qualifying members of the trade union is to members of the trade union—
- (a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
 - (b) in relation to whom it is the function of the union learning representative to act as such.
- (10) For the purposes of this Article—
- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules;
 - (b) the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.
- (11) The Department may by order amend the preceding provisions of this Article for the purpose of changing the purposes for which an employee may take time off under this Article.”.
- (3) In Article 93(1) and (6) (duty of employer to pay employee for time off under Article 92), after “92” there shall be inserted “or 92A”.
- (4) In Article 94 (duty to permit time off to take part in trade union activities), after paragraph (2) there shall be inserted—
- “(2A) The right conferred by paragraph (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.
 - (2B) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take

time off during his working hours for the purpose of having access to services provided by a person in his capacity as a learning representative of the trade union.

(2C) Paragraph (2B) only applies if the learning representative would be entitled to time off under paragraph (1) of Article 92A for the purpose of carrying on in relation to the employee activities of the kind mentioned in paragraph (2) of that Article.”.

(5) In that Article, at the end there shall be inserted—

“(5) For the purposes of this Article—

- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and
- (b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in Article 92A(2) in that capacity.”.

(6) In Article 95(1)(a) (complaints to industrial tribunal) after “92” there shall be inserted “, 92A”.

Dismissal procedures agreements

32. In Article 142 of the Employment Rights Order (dismissal procedures agreements) after paragraph (3) there shall be inserted—

“(3A) The Department may by order amend paragraph (3) so as to add to the conditions specified in that paragraph such conditions as it may specify in the order.”.

Deputy Certification Officer

33. In Article 69 of the [Industrial Relations \(Northern Ireland\) Order 1992 \(NI 5\)](#) (Certification Officer) for paragraph (8) substitute—

“(8) The Certification Officer—

- (a) may appoint one or more assistant certification officers; and
- (b) may delegate to an assistant certification officer such functions as he thinks appropriate;

and references to the Certification Officer in any statutory provision relating to his functions shall be construed accordingly.”.