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STATUTORY RULES OF NORTHERN IRELAND

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**2005 No. 47**

The Information and Consultation of  
Employees Regulations (Northern Ireland) 2005

PART IX

MISCELLANEOUS

**Industrial Court: proceedings**

**35.**—(1) Where under these Regulations a person presents a complaint or makes an application to the Industrial Court the complaint or application must be in writing and in such form as the Industrial Court may require.

(2) In its consideration of a complaint or application under these Regulations, the Industrial Court shall make such enquiries as it sees fit and so far as reasonably practicable give any person whom it considers has a proper interest in the complaint or application an opportunity to be heard.

(3) The Industrial Court may draw an adverse inference from a party's failure to comply with any reasonable request to provide information or documents relevant to a complaint presented to it or an application made to it.

(4) A declaration or order made by the Industrial Court under these Regulations may be relied on in relation to an employer whose registered office, head office or principal place of business is in Northern Ireland, as if it were a declaration or order made by the High Court.

(5) A declaration or order made by the Industrial Court under these Regulations must be in writing and state the reasons for the Industrial Court's findings.

(6) An appeal lies to the High Court on any question of law arising from any declaration or order of, or arising in any proceedings before, the Industrial Court under these Regulations.

**Labour Relations Agency**

**36.**—(1) If on receipt of an application or complaint under these Regulations the Industrial Court is of the opinion that it is reasonably likely to be settled by conciliation or other assistance provided by the Agency in accordance with paragraph (2), it shall refer the application or complaint to the Agency and shall notify the applicant or complainant and any persons whom it considers have a proper interest in the application or complaint accordingly.

(2) Where the Industrial Court refers an application or complaint to the Agency under paragraph (1), Article 84 of the 1992 Order (functions of the Agency in relation to trade disputes) shall apply, and the Agency may assist the parties to achieve a settlement, as if –

- (a) the dispute or difference between the parties amounted to a trade dispute as defined in Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995(1); and

(b) the parties to the application or complaint had requested the assistance of the Agency under Article 84 of the 1992 Order.

(3) If the Agency does not consider it appropriate to offer its assistance in accordance with paragraph (2) it shall inform the Industrial Court.

(4) If the Agency has offered the parties its assistance in accordance with paragraph (2), the application or complaint referred has not thereafter been settled or withdrawn, and the Agency is of the opinion that no provision or further provision of its assistance is likely to result in a settlement or withdrawal, it shall inform the Industrial Court of its opinion.

(5) If –

(a) an application or complaint is not referred to the Agency; or

(b) it is so referred, but the Agency informs the Industrial Court as mentioned in paragraph (3) or (4),

the Industrial Court shall proceed to hear and determine the application or complaint.

#### **Restrictions on contracting out: general**

**37.**—(1) Any provision in any agreement (whether an employee’s contract or not) is void in so far as it purports –

(a) to exclude or limit the operation of any provision of these Regulations other than a provision of Part VIII; or

(b) to preclude a person from bringing any proceedings before the Industrial Court or High Court under any provision of these Regulations other than a provision of Part VIII.

(2) Paragraph (1) does not apply to any agreement to refrain from continuing any proceedings referred to in sub-paragraph (b) of that paragraph made after the proceedings have been instituted.

#### **Restrictions on contracting out: Part VIII**

**38.**—(1) Any provision in any agreement (whether an employee’s contract or not) is void in so far as it purports –

(a) to exclude or limit the operation of any provision of Part VIII; or

(b) to preclude a person from bringing any proceedings before an industrial tribunal under that Part.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an industrial tribunal where the Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an industrial tribunal proceedings within Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (proceedings under these Regulations where conciliation is available) if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(4) For the purposes of paragraph (3) the conditions regulating compromise agreements are that –

(a) the agreement must be in writing;

(b) the agreement must relate to the particular proceedings;

(c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal;

- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;
  - (e) the agreement must identify the adviser; and
  - (f) the agreement must state that the conditions in sub-paragraphs (a) to (e) are satisfied.
- (5) A person is a relevant independent adviser for the purposes of paragraph (4)(c) if he –
- (a) is a qualified lawyer;
  - (b) is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and authorised to do so on behalf of the trade union; or
  - (c) works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and authorised to do so on behalf of the centre.
- (6) A person is not a relevant independent adviser for the purposes of paragraph (4)(c) –
- (a) if he is the employer or an associated employer or is employed by or is acting in the matter for the employer or an associated employer;
  - (b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the employer or an associated employer; or
  - (c) in the case of a person within paragraph (5)(c), if the employee makes a payment for the advice received from him.
- (7) In paragraph (5)(a), “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (8) For the purposes of paragraph (6) any two employers shall be treated as associated if –
- (a) one is a company of which the other (directly or indirectly) has control; or
  - (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

### **Crown employment**

**39.**—(1) These Regulations have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other employees.

(2) In these Regulations “Crown employment” means employment in an undertaking to which these Regulations apply and which is under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision.

(3) For the purposes of the application of these Regulations in relation to Crown employment in accordance with paragraph (1) –

- (a) references to an employee shall be construed as references to a person in Crown employment; and
- (b) references to a contract of employment shall be construed as references to the terms of employment of a person in Crown employment.

### **Exception for merchant navy**

**40.**—(1) Subject to paragraph (3), no long haul crew member shall be –

- (a) a negotiating representative; or
- (b) an information and consultation representative.

(2) In paragraph (1), a “long haul crew member” means a person who is a member of a merchant navy crew other than –

- (a) a ferry worker; or
- (b) a person who normally works on voyages the duration of which is less than 48 hours.

(3) Paragraph (1) does not apply where the employer decides that the long haul crew member in question shall be permitted to be, as the case may be, a negotiating representative or an information and consultation representative.

(4) Where paragraph (1) applies, no long haul crew member shall –

- (a) stand as a candidate for election as a negotiating representative or an information and consultation representative; or
- (b) be elected or appointed to be a negotiating representative or an information and consultation representative.