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STATUTORY INSTRUMENTS

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**1996 No. 1921**

**The Industrial Tribunals (Northern Ireland) Order 1996**

*Procedure*

**Conduct of hearings**

8.—(1) A person Procedure may appear before an industrial tribunal in person or be represented by—

- (a) counsel or a solicitor,
- (b) a representative of a trade union or an employers' association, or
- (c) any other person whom he desires to represent him.

(2) Part I of the Arbitration Act 1996 does not apply to any proceedings before an industrial tribunal.

**Industrial tribunal procedure regulations**

9.—(1) The Department may by regulations (“industrial tribunal procedure regulations”) make such provision as appears to it to be necessary or expedient with respect to proceedings before industrial tribunals.

(2) Proceedings before industrial tribunals shall be instituted in accordance with industrial tribunal procedure regulations.

(3) Industrial tribunal procedure regulations may, in particular, include provision—

- (a) for determining by which tribunal any proceedings are to be determined,
- (b) for enabling an industrial tribunal to hear and determine proceedings brought by virtue of Article 5 concurrently with proceedings brought before the tribunal otherwise than by virtue of that Article,
- (c) for treating the Department (either generally or in such circumstances as may be prescribed by the regulations) as a party to any proceedings before an industrial tribunal (where it would not otherwise be a party to them) and entitling it to appear and to be heard accordingly,
- (d) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses,
- (e) for enabling an industrial tribunal, on the application of any party to the proceedings before it or of its own motion, to order such discovery or inspection of documents, or the furnishing of such further particulars, as might be ordered by a county court on application by a party to proceedings before it,
- (f) for prescribing the procedure to be followed in any proceedings before an industrial tribunal, including provisions—

- (i) as to the persons entitled to appear and to be heard on behalf of parties to such proceedings, and

- (ii) for enabling an industrial tribunal to review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with the regulations,
  - (g) for the appointment of one or more assessors for the purposes of any proceedings before an industrial tribunal, where the proceedings are brought under a statutory provision which provides for one or more assessors to be appointed,
  - (h) for authorising an industrial tribunal to require persons to furnish information and produce documents to a person required for the purposes of section 2A(1)(h) of the Equal Pay Act (Northern Ireland) 1970 to prepare a report, and
  - (i) for the registration and proof of decisions, orders and awards of industrial tribunals.
- (4) A person who without reasonable excuse fails to comply with—
- (a) any requirement imposed by virtue of paragraph (3)(d) or
  - (b) any requirement with respect to the discovery or inspection of documents imposed by virtue of paragraph (3)(e),
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Subject to any regulations under Article 13(1)(a), industrial tribunal procedure regulations may include provision authorising or requiring an industrial tribunal, in circumstances specified in the regulations, to send notice or a copy of—
- (a) any document specified in the regulations which relates to any proceedings before the tribunal, or
  - (b) any decision, order or award of the tribunal,
- to any government department or other person or body so specified.
- (6) Where in accordance with industrial tribunal procedure regulations an industrial tribunal determines in the same proceedings—
- (a) a complaint presented under Article 145 of the Employment Rights Order (unfair dismissal), and
  - (b) a question referred under Article 198 of that Order (redundancy payments),
- paragraph (2) of that Article has no effect for the purposes of the proceedings in so far as they relate to the complaint under Article 145.

### **Procedure in contract cases**

**10.**—(1) Where in proceedings brought by virtue of Article 5 an industrial tribunal finds that the whole or part of a sum claimed in the proceedings is due, the tribunal shall order the respondent to the proceedings to pay the amount which it finds due.

(2) An order under Article 5 may provide that an industrial tribunal shall not in proceedings in respect of a claim, or a number of claims relating to the same contract, order the payment of an amount exceeding such sum as may be specified in the order as the maximum amount which an industrial tribunal may order to be paid in relation to a claim or in relation to a contract.

- (3) An order under Article 5 may include provisions—
- (a) as to the manner in which and time within which proceedings are to be brought by virtue of that Article, and
  - (b) modifying any other statutory provision.

## **Pre-hearing reviews and preliminary matters**

**11.**—(1) Industrial tribunal procedure regulations may include provision—

- (a) for authorising the carrying-out by an industrial tribunal of a preliminary consideration of any proceedings before it (a “pre-hearing review”), and
- (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the regulations.

(2) Such regulations may in particular include provision—

- (a) for authorising any tribunal carrying out a pre-hearing review under the regulations to make, in circumstances specified in the regulations, an order requiring a party to the proceedings in question, if he wishes to continue to participate in those proceedings, to pay a deposit of an amount not exceeding £150, and
- (b) for prescribing—
  - (i) the manner in which the amount of any such deposit is to be determined in any particular case,
  - (ii) the consequences of non-payment of any such deposit, and
  - (iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it or be paid over to another party to the proceedings.

(3) The Department may by order substitute for the sum specified in paragraph (2)(a) such other sum as is specified in the order.

(4) Industrial tribunal procedure regulations may also include provision for authorising an industrial tribunal to hear and determine any issue relating to the entitlement of any party to proceedings to bring or contest the proceedings in advance of the hearing and determination of the proceedings by that or any other industrial tribunal.

(5) Where a complaint is presented to an industrial tribunal under Article 145 of the Employment Rights Order (unfair dismissal) and it appears to the tribunal that the dismissal to which the complaint relates is one in respect of which (as being unlawful discrimination within the meaning of the Fair Employment (Northern Ireland) Act 1976)—

- (a) a complaint could be made to the Fair Employment Tribunal for Northern Ireland under Part III of that Act, or
- (b) such a complaint has been made, but the proceedings under that Act have not been disposed of,

the tribunal shall not proceed further under the Employment Rights Order in relation to the complaint unless all proceedings which can be taken under that Act in respect of the dismissal have been disposed of.

## **National security etc.**

**12.**—(1) The Secretary of State may on grounds of national security direct an industrial tribunal to sit in private when hearing or determining any proceedings specified in the direction.

(2) Industrial tribunal procedure regulations may enable an industrial tribunal to sit in private for the purpose of—

- (a) hearing evidence which in the opinion of the tribunal relates to matters of such a nature that it would be against the interests of national security, public safety or public order to allow the evidence to be given in public, or
- (b) hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

- (i) information which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision,
- (ii) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
- (iii) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992, cause substantial injury to any undertaking of his or in which he works.

(3) The reference in paragraph (2)(b)(iii) to any undertaking of a person or in which he works shall be construed, in relation to a person in Crown employment, as a reference to the national interest.

(4) If on a complaint under Article 74 (action short of dismissal) or 145 (unfair dismissal) of the Employment Rights Order it is shown that the action complained of was taken for the purpose of safeguarding national security, or protecting public safety or public order, the industrial tribunal shall dismiss the complaint.

(5) Except where the complaint is that a dismissal is unfair by virtue of—

- (a) Article 131(1) to (3) (pregnancy), 132 (health and safety) or 134 (employee representatives) of the Employment Rights Order, or
- (b) paragraph (1) of Article 137 of that Order (redundancy) by T reason of the application of paragraph (2), (3) or (5) of that Article,

a certificate purporting to be signed by or on behalf of the Secretary of State and certifying that the action specified in the certificate was taken for the purpose of safeguarding national security, or protecting public safety or public order, is for the purposes of paragraph (4) conclusive evidence of that fact.

(6) The reference in paragraph (5) to “dismissal” shall, in relation to a person in Crown employment, be construed as a reference to termination of Crown employment.

### **Restriction of publicity in cases involving sexual misconduct**

**13.—**(1) Industrial tribunal procedure regulations may include provision—

- (a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation, and
- (b) for cases involving allegations of sexual misconduct, enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

(2) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order—

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
- (b) in the case of publication in any other form, the person publishing the matter, and
- (c) in the case of matter included in a relevant programme—
  - (i) any body corporate engaged in providing the service in which the programme is included, and
  - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where a person is charged with an offence under paragraph (2) it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the matter in question.

(4) In this Article—

“identifying matter”, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation,

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,

“restricted reporting order” means an order—

(a) made in exercise of a power conferred by regulations made by virtue of this Article, and

(b) prohibiting the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland,

“sexual misconduct” means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed,

“sexual offence” means—

(a) rape, aiding, abetting, counselling or procuring rape or attempted rape, incitement to rape, conspiracy to rape or burglary with intent to rape;

(b) any offence under any of the following statutory provisions, namely—

(i) section 52, 61 or 62 of the Offences Against the Person Act 1861;

(ii) section 3, 4 or 5 of the Criminal Law Amendment Act 1885;

(iii) section 1 or 2 of the Punishment of Incest Act 1908;

(iv) section 22 of the Children and Young Persons Act (Northern Ireland) 1968;

(v) Article 9 of the Criminal Justice (Northern Ireland) Order 1980;

(vi) Article 122(1)(a) or (b) or 123 of the Mental Health (Northern Ireland) Order 1986;

(c) any attempt to commit any of the offences mentioned in sub-paragraph (a) or (b);

“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

### **Restriction of publicity in disability cases**

**14.**—(1) This Article applies to proceedings on a complaint under section 8 of the Disability Discrimination Act 1995 in which evidence of a personal nature is likely to be heard by the industrial tribunal hearing the complaint.

(2) Industrial tribunal procedure regulations may include provision in relation to proceedings to which this Article applies for—

(a) enabling an industrial tribunal, on the application of the complainant or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal, and

- (b) where a restricted reporting order is made in relation to a complaint which is being dealt with by the tribunal together with any other proceedings, enabling the tribunal to direct that the order is to apply also in relation to those other proceedings or such part of them as the tribunal may direct.
- (3) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order—
- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
- (b) in the case of publication in any other form, the person publishing the matter, and
- (c) in the case of matter included in a relevant programme—
- (i) any body corporate engaged in providing the service in which the programme is included, and
- (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Where a person is charged with an offence under paragraph (3), it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the matter in question.
- (5) In this Article—
- “evidence of a personal nature” means any evidence of a medical, or other intimate, nature which might reasonably be assumed to be likely to cause significant embarrassment to the complainant if reported,
- “identifying matter” means any matter likely to lead members of the public to identify the complainant or such other persons (if any) as may be named in the order,
- “promulgation” has such meaning as may be prescribed by regulations made by virtue of this Article,
- “relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,
- “restricted reporting order” means an order—
- (a) made in exercise of a power conferred by regulations made by virtue of this Article, and
- (b) prohibiting the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland, and
- “written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

### **Costs and expenses**

- 15.—**(1) Industrial tribunal procedure regulations may include provision—
- (a) for the award of costs or expenses, including any allowances payable under Article 7(2) (c) or (3), and
- (b) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in a county court).

(2) In relation to proceedings under Article 145 of the Employment Rights Order (unfair dismissal)—

- (a) where the employee has expressed a wish to be reinstated or re-engaged which has been communicated to the employer at least seven days before the hearing of the complaint, or
- (b) where the proceedings arise out of the employer's failure to permit the employee to return to work after an absence due to pregnancy or childbirth,

industrial tribunal procedure regulations shall include provision for requiring the employer to pay the costs or expenses of any postponement or adjournment of the hearing caused by his failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the complainant was dismissed, or which she held before her absence, or of comparable or suitable employment.

### **Interest**

**16.—**(1) The Department may by order made with the approval of the Department of Finance and Personnel provide that sums payable in pursuance of decisions of industrial tribunals shall carry interest at such rate and between such times as may be prescribed by the order.

(2) Any interest due by virtue of such an order shall be recoverable as a sum payable in pursuance of the decision.

(3) The power conferred by paragraph (1) includes power—

- (a) to specify cases or circumstances in which interest is not payable,
- (b) to provide that interest is payable only on sums exceeding a specified amount or falling between specified amounts,
- (c) to make provision for the manner in which and the periods by reference to which interest is to be calculated and paid,
- (d) to provide that any statutory provision—
  - (i) does or does not apply in relation to interest payable by virtue of paragraph (1), or
  - (ii) applies to it with such modifications as may be specified in the order,
- (e) to make provision for cases where sums are payable in pursuance of decisions or awards made on appeal from industrial tribunals.

(4) In particular, an order under paragraph (1) may provide that the rate of interest shall be the rate from time to time in force in relation to interest on amounts awarded by decree in the county court.

### **Enforcement**

**17.—**(1) Any sum payable in pursuance of a decision of an industrial tribunal which has been registered in accordance with industrial tribunal procedure regulations shall, if a county court so orders, be enforceable as if it were payable under an order of that court.

(2) In this Article a reference to a decision of an industrial tribunal—

- (a) does not include a decision which, on being reviewed, has been revoked by the tribunal, and
- (b) in relation to a decision which on being reviewed, has been varied by the tribunal, shall be construed as a reference to the decision as so varied.