
STATUTORY INSTRUMENTS

2003 No. 2902

The Employment (Northern Ireland) Order 2003

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Employment (Northern Ireland) Order 2003.

(2) Parts II to V (with the Schedules) come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions and savings as the Department considers necessary or expedient in connection with the coming into operation of any of the provisions of this Order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Department” means the Department for Employment and Learning;

“employer” and “employee” have the same meanings as in the Employment Rights Order;

“the Employment Rights Order” means the [Employment Rights \(Northern Ireland\) Order 1996 \(NI 16\)](#);

“the Fair Employment and Treatment Order” means the [Fair Employment and Treatment \(Northern Ireland\) Order 1998 \(NI 21\)](#);

“the Industrial Tribunals Order” means the [Industrial Tribunals \(Northern Ireland\) Order 1996 \(NI 18\)](#);

“statutory procedure” means a procedure set out in Schedule 1;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

PART II

INDUSTRIAL TRIBUNAL REFORM

Conciliation

3.—(1) In Article 9 of the Industrial Tribunals Order (industrial tribunal procedure regulations), in paragraph (3)(f) (power to prescribe the procedure to be followed in proceedings before an industrial tribunal), before sub-paragraph (ii) there shall be inserted—

“(ia) for postponing fixing a time and place for a hearing, or postponing a time fixed for a hearing, for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, and”.

(2) In Article 20 of that Order (conciliation), after paragraph (2) there shall be inserted—

“(2A) Where industrial tribunal procedure regulations include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, paragraph (2) shall have effect from the end of the postponement to confer a power on the Agency, instead of imposing a duty.”

(3) In Article 21 of that Order (conciliation procedure), paragraph (c) (which requires industrial tribunal procedure regulations, in relation to conciliation cases, to include provision postponing the hearing to give an opportunity for conciliation) shall cease to have effect.

(4) In that Article, the existing provision (as amended by paragraph (3)) shall become paragraph (1) and at the end there shall be inserted—

“(2) If industrial tribunal procedure regulations include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, they shall also include provision for the parties to proceedings to which the provision for postponement applies to be notified that the services of the Agency may no longer be available to them after the end of the postponement.”.

Power to delegate prescription of forms, etc.

4. In Article 9 of the Industrial Tribunals Order (industrial tribunal procedure regulations), after paragraph (3) there shall be inserted—

“(3ZA) Industrial tribunal procedure regulations may—

- (a) authorise the Department to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of instituting, or entering an appearance to, proceedings before industrial tribunals;
- (b) authorise the Department to prescribe requirements in relation to documents to be supplied with any such form, and
- (c) make provision about the publication of anything prescribed under authority conferred by virtue of this paragraph.”.

Determination without a hearing

5. In Article 9 of the Industrial Tribunals Order (industrial tribunal procedure regulations) for paragraph (3A) there shall be substituted—

“(3A) Industrial tribunal procedure regulations may authorise the determination of proceedings without any hearing in such circumstances as the regulations may prescribe.”

Practice directions

6. After Article 9 of the Industrial Tribunals Order there shall be inserted—

“Practice directions

9A.—(1) Industrial tribunal procedure regulations may include provision—

- (a) enabling the President to make directions about the procedure of industrial tribunals, including directions about the exercise by tribunals of powers under such regulations;
- (b) for securing compliance with such directions; and
- (c) about the publication of such directions.

(2) Industrial tribunal procedure regulations may, instead of providing for any matter, refer to provision made or to be made about that matter by directions made by the President.

(3) In this Article, “the President” means the President of the Industrial Tribunals and the Fair Employment Tribunal.”

Pre-hearing reviews

7.—(1) Article 11 of the Industrial Tribunals Order (pre-hearing reviews) shall be amended as follows.

(2) In paragraph (1) (power to make provision for pre-hearing reviews), for sub-paragraph (a) there shall be substituted—

“(a) for authorising an industrial tribunal to carry out a review of any proceedings before it at any time before a hearing held for the purpose of determining them (a “pre-hearing review”),”.

(3) After paragraph (2) there shall be inserted—

“(2A) Regulations under paragraph (1)(b), so far as relating to striking out, may not provide for striking out on a ground which does not apply outside a pre-hearing review.”

Costs, expenses and allowances

8.—(1) In Article 15 of the Industrial Tribunals Order (costs and expenses), for paragraph (1) there shall be substituted—

“(1) Industrial tribunal procedure regulations may include provision—

- (a) for the award of costs or expenses;
- (b) for the award of any allowances payable under Article 7(2)(c) or (3).

(1A) Regulations under paragraph (1) may include provision authorising an industrial tribunal to have regard to a person’s ability to pay when considering the making of an award against him under such regulations.

(1B) Industrial tribunal procedure regulations may include provision for authorising an industrial tribunal—

- (a) to disallow all or part of the costs or expenses of a representative of a party to proceedings before it by reason of that representative’s conduct of the proceedings;
- (b) to order a representative of a party to proceedings before it to meet all or part of the costs or expenses incurred by a party by reason of the representative’s conduct of the proceedings;
- (c) to order a representative of a party to proceedings before it to meet all or part of any allowances payable by the Department under Article 7(2)(c) or (3) by reason of the representative’s conduct of the proceedings.

(1C) Industrial tribunal procedure regulations may also include provision for taxing or otherwise settling the costs or expenses referred to in paragraph (1)(a) or (1B)(b) (and, in particular for enabling such costs to be taxed in the county court).”.

(2) After that Article there shall be inserted—

“Payments in respect of preparation time

15A.—(1) Industrial tribunal procedure regulations may include provision for authorising an industrial tribunal to order a party to proceedings before it to make a payment to any other party in respect of time spent in preparing that other party’s case.

(2) Regulations under paragraph (1) may include provision authorising an industrial tribunal to have regard to a person’s ability to pay when considering the making of an order against him under such regulations.

(3) If industrial tribunal procedure regulations include—

- (a) provision of the kind mentioned in paragraph (1); and
- (b) provision of the kind mentioned in Article 15(1)(a),

they shall also include provision to prevent an industrial tribunal exercising its powers under both kinds of provision in favour of the same person in the same proceedings.”.

PART III

FAIR EMPLOYMENT TRIBUNAL REFORM

Power to delegate prescription of forms, etc.

9.—(1) In Article 84 of the Fair Employment and Treatment Order (regulations as to procedure of Fair Employment Tribunal), after paragraph (2) there shall be inserted—

“(2A) The regulations may—

- (a) authorise the Department to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of instituting, or entering an appearance to, proceedings before the Tribunal;
- (b) authorise the Department to prescribe requirements in relation to documents to be supplied with any such form, and
- (c) make provision about the publication of anything prescribed under authority conferred by virtue of this paragraph.”.

(2) In Article 84(2) of that Order, sub-paragraph (g) (forms for complaints under Article 38) shall cease to have effect.

Determination without a hearing

10.—(1) In Article 84 of the Fair Employment and Treatment Order (regulations as to procedure of Fair Employment Tribunal), after paragraph (2A) (inserted by Article 9) there shall be inserted—

“(2B) The regulations may authorise the determination of proceedings without any hearing in such circumstances as the regulations may prescribe.”.

(2) In Article 84(9) of that Order after sub-paragraph (b) there shall be inserted—

- “(c) any requirement imposed by virtue of regulations under this Article to give written answers for the purpose of facilitating the determination of proceedings as mentioned in paragraph (2B).”.

Conciliation

11.—(1) In Article 84 of the Fair Employment and Treatment Order (regulations as to procedure of Fair Employment Tribunal), for paragraph (4) there shall be substituted—

“(4) In relation to proceedings on a complaint under Article 38 the regulations may include provision for postponing fixing a time and place for a hearing, or postponing a time fixed for a hearing, for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn.”.

(2) In Article 88 of that Order (conciliation), after paragraph (1) there shall be inserted—

“(1A) Where regulations under Article 84 include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn—

- (a) paragraph (1) shall have effect from the end of the postponement to confer a power on the Agency, instead of imposing a duty; and
- (b) the regulations shall also include provision for the parties to proceedings to which the provision for postponement applies to be notified that the services of the Agency may no longer be available to them after the end of the postponement.”.

Practice directions

12. After Article 84 of the Fair Employment and Treatment Order there shall be inserted—

“Practice directions

84A.—(1) Regulations under Article 84 may include provision—

- (a) enabling the President to make directions about the procedure of the Tribunal, including directions about the exercise by the Tribunal of powers under such regulations;
- (b) for securing compliance with such directions; and
- (c) about the publication of such directions.

(2) The regulations may, instead of providing for any matter, refer to provision made or to be made about that matter by directions made by the President.”.

Pre-hearing reviews and preliminary matters

13.—(1) After Article 84A of the Fair Employment and Treatment Order (inserted by Article 12) there shall be inserted—

“Pre-hearing reviews and preliminary matters

84B.—(1) Regulations under Article 84 may include provision—

- (a) for authorising the Tribunal to carry out a review of any proceedings before it at any time before a hearing held for the purpose of determining them (a “pre-hearing review”);
- (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 the 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) Regulations under paragraph (1)(b), so far as relating to striking out, may not provide for striking out on a ground which does not apply outside a pre-hearing review.

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

(5) The regulations may also include provision for authorising the Tribunal to hear and determine separately any preliminary issue of a description prescribed by the regulations which is raised in any case.”.

(2) In Article 84(2) of that Order, sub-paragraph (f) (officer of Tribunal to determine matters arising prior to a hearing) shall cease to have effect.

Costs and allowances

14.—(1) After Article 85 of the Fair Employment and Treatment Order there shall be inserted the following Articles—

“Costs and expenses

85A.—(1) Regulations under Article 84 may include provision—

- (a) for the award of costs;
- (b) for the award of any allowances payable under Article 83(2).

(2) Regulations under paragraph (1) may include provision authorising the Tribunal to have regard to a person’s ability to pay when considering the making of an award against him under such regulations.

(3) The regulations may include provision for authorising the Tribunal—

- (a) to disallow all or part of the costs of a representative of a party to proceedings before it by reason of that representative’s conduct of the proceedings;
- (b) to order a representative of a party to proceedings before it to meet all or part of the costs incurred by a party by reason of the representative’s conduct of the proceedings;
- (c) to order a representative of a party to proceedings before it to meet all or part of any allowances payable by the Department under Article 83(2) by reason of the representative’s conduct of the proceedings.

(4) The regulations may also include provision for taxing or otherwise settling the costs referred to in paragraph (1)(a) or (3)(b) (and, in particular for enabling such costs to be taxed in the county court).

Payments in respect of preparation time

85B.—(1) Regulations under Article 84 may include provision for authorising the Tribunal to order a party to proceedings before it to make a payment to any other party in respect of time spent in preparing that other party’s case.

(2) Regulations under paragraph (1) may include provision authorising the Tribunal to have regard to a person's ability to pay when considering the making of an order against him under such regulations.

(3) If regulations under Article 84 include—

(a) provision of the kind mentioned in paragraph (1); and

(b) provision of the kind mentioned in Article 85A(1)(a),

they shall also include provision to prevent the Tribunal exercising its powers under both kinds of provision in favour of the same person in the same proceedings.”.

(2) In Article 84(2) of that Order, sub-paragraphs (i) and (j) (costs and taxing of costs) shall cease to have effect.

PART IV

DISPUTE RESOLUTION, ETC.

Statutory procedures

Statutory dispute resolution procedures

15.—(1) Schedule 1 (which sets out the statutory dispute resolution procedures) shall have effect.

(2) The Department may by order—

(a) amend Schedule 1;

(b) make provision for that Schedule to apply, with or without modifications, as if—

(i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of the Schedule were an employee for those purposes; and

(ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

(3) Before making an order under this Article, the Department shall consult the Labour Relations Agency.

Contracts of employment

16.—(1) Every contract of employment shall have effect to require the employer and employee to comply, in relation to any matter to which a statutory procedure applies, with the requirements of the procedure.

(2) Paragraph (1) shall have effect notwithstanding any agreement to the contrary, but does not affect so much of an agreement to follow a particular procedure as requires the employer or employee to comply with a requirement which is additional to, and not inconsistent with, the requirements of the statutory procedure.

(3) The Department may for the purpose of this Article by regulations make provision about the application of the statutory procedures.

(4) In this Article, “contract of employment” has the same meaning as in the Employment Rights Order.

Non-completion of statutory procedure: adjustment of awards by industrial tribunals

17.—(1) This Article applies to proceedings before an industrial tribunal relating to a claim under any of the jurisdictions listed in Schedule 2 by an employee.

(2) If, in the case of proceedings to which this Article applies, it appears to the industrial tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employee—

(i) to comply with a requirement of the procedure, or

(ii) to exercise a right of appeal under it,

it shall, subject to paragraph (4), reduce any award which it makes to the employee by 10 per cent, and may, if it considers it just and equitable in all the circumstances to do so, reduce it by a further amount, but not so as to make a total reduction of more than 50 per cent.

(3) If, in the case of proceedings to which this Article applies, it appears to the industrial tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employer to comply with a requirement of the procedure,

it shall, subject to paragraph (4), increase any award which it makes to the employee by 10 per cent and may, if it considers it just and equitable in all the circumstances to do so, increase it by a further amount, but not so as to make a total increase of more than 50 per cent.

(4) The duty under paragraph (2) or (3) to make a reduction or increase of 10 per cent does not apply if there are exceptional circumstances which would make a reduction or increase of that percentage unjust or inequitable, in which case the tribunal may make no reduction or increase or a reduction or increase of such lesser percentage as it considers just and equitable in all the circumstances.

(5) Where an award falls to be adjusted under this Article and under Article 27, the adjustment under this Article shall be made before the adjustment under that Article.

(6) The Department may for the purposes of this Article by regulations—

- (a) make provision about the application of the statutory procedures;
- (b) make provision about when a statutory procedure is to be taken to be completed;
- (c) make provision about what constitutes compliance with a requirement of a statutory procedure;
- (d) make provision about circumstances in which a person is to be treated as not subject to, or as having complied with, such a requirement;
- (e) make provision for a statutory procedure to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified;
- (f) make provision about when an employee is required to exercise a right of appeal under a statutory procedure.

(7) The Department may by order—

- (a) amend Schedule 2 for the purpose of—
 - (i) adding a jurisdiction to the list in that Schedule, or
 - (ii) removing a jurisdiction from that list;
- (b) make provision, in relation to a jurisdiction listed in Schedule 2, for this Article not to apply to proceedings relating to claims of a description specified in the order;
- (c) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual’s employer for those purposes.

Non-completion of statutory procedure: adjustment of awards by Fair Employment Tribunal

18.—(1) This Article applies to proceedings before the Fair Employment Tribunal relating to a complaint by an employee under Article 38 of the Fair Employment and Treatment Order.

(2) If, in the case of proceedings to which this Article applies, it appears to the Fair Employment Tribunal that—

- (a) the complaint concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employee—
 - (i) to comply with a requirement of the procedure, or
 - (ii) to exercise a right of appeal under it,

it shall, subject to paragraph (4), reduce any award of compensation which it makes to the employee by 10 per cent, and may, if it considers it just and equitable in all the circumstances to do so, reduce it by a further amount, but not so as to make a total reduction of more than 50 per cent.

(3) If, in the case of proceedings to which this Article applies, it appears to the Fair Employment Tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,
- (b) the statutory procedure was not completed before the proceedings were begun, and
- (c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employer to comply with a requirement of the procedure,

it shall, subject to paragraph (4), increase any award which it makes to the employee by 10 per cent and may, if it considers it just and equitable in all the circumstances to do so, increase it by a further amount, but not so as to make a total increase of more than 50 per cent.

(4) The duty under paragraph (2) or (3) to make a reduction or increase of 10 per cent does not apply if there are exceptional circumstances which would make a reduction or increase of that percentage unjust or inequitable, in which case the Fair Employment Tribunal may make no reduction or increase or a reduction or increase of such lesser percentage as it considers just and equitable in all the circumstances.

(5) Where an award falls to be adjusted under this Article and under Article 28, the adjustment under this Article shall be made before the adjustment under that Article.

(6) The Department may for the purposes of this Article by regulations—

- (a) make provision about the application of the statutory procedures;
 - (b) make provision about when a statutory procedure is to be taken to be completed;
 - (c) make provision about what constitutes compliance with a requirement of a statutory procedure;
 - (d) make provision about circumstances in which a person is to be treated as not subject to, or as having complied with, such a requirement;
 - (e) make provision for a statutory procedure to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified;
 - (f) make provision about when an employee is required to exercise a right of appeal under a statutory procedure.
- (7) The Department may by order—
- (a) make provision for this Article not to apply to proceedings relating to a complaint under Article 38 of the Fair Employment and Treatment Order of a description specified in the order;
 - (b) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

Complaints about grievances: industrial tribunals

- 19.—(1) This Article applies to the jurisdictions listed in Schedule 3.
- (2) An employee shall not present a complaint to an industrial tribunal under a jurisdiction to which this Article applies if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 applies, and
 - (b) the requirement has not been complied with.
- (3) An employee shall not present a complaint to an industrial tribunal under a jurisdiction to which this Article applies if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 has been complied with, and
 - (b) less than 28 days have passed since the day on which the requirement was complied with.
- (4) An employee shall not present a complaint to an industrial tribunal under a jurisdiction to which this Article applies if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 has been complied with, and
 - (b) the day on which the requirement was complied with was more than one month after the end of the original time limit for making the complaint.
- (5) In such circumstances as the Department may specify by regulations, an industrial tribunal may direct that paragraph (4) shall not apply in relation to a particular matter.
- (6) An industrial tribunal shall be prevented from considering a complaint presented in breach of paragraphs (2) to (4), but only if—
- (a) the breach is apparent to the tribunal from the information supplied to it by the employee in connection with the bringing of the proceedings, or

- (b) the tribunal is satisfied of the breach as a result of his employer raising the issue of compliance with those provisions in accordance with regulations under Article 9 of the Industrial Tribunals Order (industrial tribunal procedure regulations).
- (7) The Department may for the purposes of this Article by regulations—
 - (a) make provision about the application of the procedures set out in Part II of Schedule 1;
 - (b) make provision about what constitutes compliance with paragraph 6 or 9 of that Schedule;
 - (c) make provision about circumstances in which a person is to be treated as having complied with paragraph 6 or 9 of that Schedule;
 - (d) make provision for paragraph 6 or 9 of that Schedule to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified.
- (8) The Department may by order—
 - (a) amend, repeal or replace any of paragraphs (2) to (4);
 - (b) amend Schedule 3;
 - (c) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.
- (9) Before making an order under paragraph (8)(a), the Department shall consult the Labour Relations Agency.
- (10) In its application to orders under paragraph (8)(a), Article 34(1) includes power to amend this Article.

Complaints about grievances: Fair Employment Tribunal

- 20.—**(1) An employee shall not present a complaint to the Fair Employment Tribunal under Article 38 of the Fair Employment and Treatment Order if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 applies, and
 - (b) the requirement has not been complied with.
- (2) An employee shall not present such a complaint if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 has been complied with, and
 - (b) less than 28 days have passed since the day on which the requirement was complied with.
- (3) An employee shall not present such a complaint if—
- (a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 1 has been complied with, and
 - (b) the day on which the requirement was complied with was more than one month after the end of the original time limit for making the complaint.
- (4) In such circumstances as the Department may specify by regulations, the Fair Employment Tribunal may direct that paragraph (3) shall not apply in relation to a particular matter.
- (5) The Fair Employment Tribunal shall be prevented from considering a complaint presented in breach of paragraphs (1) to (3), but only if—
- (a) the breach is apparent to the Tribunal from the information supplied to it by the employee in connection with the bringing of the proceedings, or

- (b) the Tribunal is satisfied of the breach as a result of his employer raising the issue of compliance with those provisions in accordance with regulations under Article 84 of the Fair Employment and Treatment Order (procedure regulations).
- (6) The Department may for the purposes of this Article by regulations—
 - (a) make provision about the application of the procedures set out in Part II of Schedule 1;
 - (b) make provision about what constitutes compliance with paragraph 6 or 9 of that Schedule;
 - (c) make provision about circumstances in which a person is to be treated as having complied with paragraph 6 or 9 of that Schedule;
 - (d) make provision for paragraph 6 or 9 of that Schedule to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified.
- (7) The Department may by order—
 - (a) amend, repeal or replace any of paragraphs (1) to (3);
 - (b) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.
- (8) Before making an order under paragraph (7)(a), the Department shall consult the Labour Relations Agency.
- (9) In its application to orders under paragraph (7)(a), Article 34(1) includes power to amend this Article.

Consequential adjustment of time limits: industrial tribunals

21.—(1) The Department may, in relation to a jurisdiction listed in Schedule 2 or 3, by regulations make provision about the time limit for beginning proceedings in respect of a claim concerning a matter to which a statutory procedure applies.

- (2) Regulations under this Article may, in particular—
 - (a) make provision extending, or authorising the extension of, the time for beginning proceedings,
 - (b) make provision about the exercise of a discretion to extend the time for beginning proceedings, or
 - (c) make provision treating proceedings begun out of time as begun within time.

Consequential adjustment of time limits: Fair Employment Tribunal

22.—(1) The Department may by regulations make provision about the time limit for bringing a complaint under Article 38 of the Fair Employment and Treatment Order concerning a matter to which a statutory procedure applies.

- (2) Regulations under this Article may, in particular—
 - (a) make provision extending, or authorising the extension of, the time for bringing such a complaint,
 - (b) make provision about the exercise of a discretion to extend the time for bringing such a complaint, or
 - (c) make provision treating complaints made out of time as made within time.

Procedural fairness in unfair dismissal

23.—(1) Part XI of the Employment Rights Order (unfair dismissal) shall be amended as follows.

(2) After Article 130 there shall be inserted—

“Procedural fairness

130A.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) one of the procedures set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003 (dismissal and disciplinary procedures) applies in relation to the dismissal,
- (b) the procedure has not been completed, and
- (c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.

(2) Subject to paragraph (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of Article 130(4)(a) as by itself making the employer’s action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.

(3) For the purposes of this Article, any question as to the application of a procedure set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003, completion of such a procedure or failure to comply with the requirements of such a procedure shall be determined by reference to regulations under Article 17 of that Order.”.

(3) In Article 146 (the remedies: orders and compensation), at the end there shall be inserted—

“(5) Where—

- (a) an employee is regarded as unfairly dismissed by virtue of Article 130A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason), and

(b) an order is made in respect of the employee under Article 147,

the industrial tribunal shall, subject to paragraph (6), also make an award of four weeks' pay to be paid by the employer to the employee.

(6) An industrial tribunal shall not be required to make an award under paragraph (5) if it considers that such an award would result in injustice to the employer.”.

(4) In Article 151 (under which an award of compensation falls to be made if an employee is reinstated or re-engaged in pursuance of an order under Article 147, but the terms of the order are not fully complied with), after paragraph (2) there shall be inserted—

“(2A) There shall be deducted from any award under paragraph (1) the amount of any award made under Article 146(5) at the time of the order under Article 147.”.

(5) In Article 154 (basic award: minimum in certain cases) after paragraph (1) there shall be inserted—

“(1A) Where—

- (a) an employee is regarded as unfairly dismissed by virtue of Article 130A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason),

(b) an award of compensation falls to be made under Article 146(4), and

(c) the amount of the award under Article 152(1)(a), before any reduction under Article 156(3A) or (4), is less than the amount of four weeks' pay,

the industrial tribunal shall, subject to paragraph (1B), increase the award under Article 152(1)(a) to the amount of four weeks' pay.

(1B) An industrial tribunal shall not be required by paragraph (1A) to increase the amount of an award if it considers that the increase would result in injustice to the employer.”.

(6) In Article 157 (compensatory award) at the end there shall be inserted—

“(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under Article 151(3)(a), there shall be deducted from the compensatory award any award made under Article 146(5) at the time of the order under Article 147.”.

Employment particulars

Particulars of procedures relating to discipline or dismissal

24.—(1) Article 35 of the Employment Rights Order (note about disciplinary rules and procedures) shall be amended as follows.

(2) In paragraph (1) (which requires a statement under Article 33 of that Order to include a note specifying the disciplinary rules and procedures applying to an employee), after sub-paragraph (a) there shall be inserted—

“(aa) specifying any procedure applicable to the taking of disciplinary decisions relating to the employee, or to a decision to dismiss the employee, or referring the employee to the provisions of a document specifying such a procedure which is reasonably accessible to the employee.”.

(3) In that paragraph, in sub-paragraph (b)(i) (which requires the note to specify a person for the employee to apply to if he is dissatisfied with a disciplinary decision) after “him” there shall be inserted “or any decision to dismiss him”.

(4) In paragraph (2) (which provides that the note does not need to specify the rules and procedures relating to health and safety at work) after “decisions,” there shall be inserted “decisions to dismiss”.

Removal of exemption for small employers

25. In Article 35 of the Employment Rights Order (note about disciplinary rules and procedures), paragraphs (3) and (4) (exemptions for undertakings with less than 20 employees) shall cease to have effect.

Use of alternative documents to give particulars

26. In Part III of the Employment Rights Order (employment particulars), after Article 39 there shall be inserted—

“Use of alternative documents to give particulars

39A.—(1) Paragraphs (2) and (3) apply where—

- (a) an employer gives an employee a document in writing in the form of a contract of employment or letter of engagement,
- (b) the document contains information which, were the document in the form of a statement under Article 33, would meet the employer’s obligation under that Article in relation to the matters mentioned in paragraphs (3) and (4)(a) to (c), (d) (i), (f) and (h) of that Article, and

(c) the document is given after the beginning of the employment and before the end of the period for giving a statement under that Article.

(2) The employer's duty under Article 33 in relation to any matter shall be treated as met if the document given to the employee contains information which, were the document in the form of a statement under that Article, would meet the employer's obligation under that Article in relation to that matter.

(3) The employer's duty under Article 35 shall be treated as met if the document given to the employee contains information which, were the document in the form of a statement under Article 33 and the information included in the form of a note, would meet the employer's obligation under Article 35.

(4) For the purposes of this Article a document to which paragraph (1)(a) applies shall be treated, in relation to information in respect of any of the matters mentioned in Article 33(4), as specifying the date on which the document is given to the employee as the date as at which the information applies.

(5) Where paragraph (2) applies in relation to any matter, the date on which the document by virtue of which that paragraph applies is given to the employee shall be the material date in relation to that matter for the purposes of Article 36(1).

(6) Where paragraph (3) applies, the date on which the document by virtue of which that paragraph applies is given to the employee shall be the material date for the purposes of Article 36(1) in relation to the matters of which particulars are required to be given under Article 35.

(7) The reference in Article 36(6) to an employer having given a statement under Article 33 shall be treated as including his having given a document by virtue of which his duty to give such a statement is treated as met.

Giving of alternative documents before start of employment

39B. A document in the form of a contract of employment or letter of engagement given by an employer to an employee before the beginning of the employee's employment with the employer shall, when the employment begins, be treated for the purposes of Article 39A as having been given at that time."

Failure to give statement of employment particulars, etc.: industrial tribunals

27.—(1) This Article applies to proceedings before an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4.

(2) If in the case of proceedings to which this Article applies—

- (a) the industrial tribunal finds in favour of the employee, but makes no award to him in respect of the claim to which the proceedings relate, and
- (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order (duty to give a written statement of initial employment particulars or of particulars of change),

the tribunal shall, subject to paragraph (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

(3) If in the case of proceedings to which this Article applies—

- (a) the industrial tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order, the tribunal shall, subject to paragraph (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In paragraphs (2) and (3)—

- (a) references to the minimum amount are to an amount equal to two weeks' pay, and
- (b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under paragraph (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that paragraph unjust or inequitable.

(6) The amount of a week's pay of an employee shall—

- (a) be calculated for the purposes of this Article in accordance with Chapter IV of Part I of the Employment Rights Order; and
- (b) not exceed the amount for the time being specified in Article 23 of that Order (maximum amount of week's pay).

(7) For the purposes of Chapter IV of Part I of the Employment Rights Order as applied by paragraph (6), the calculation date shall be taken to be—

- (a) if the employee was employed by the employer on the date the proceedings were begun, that date, and
- (b) if he was not, the effective date of termination as defined by Article 129 of that Order.

(8) The Department may by order—

- (a) amend Schedule 4 for the purpose of—
 - (i) adding a jurisdiction to the list in that Schedule, or
 - (ii) removing a jurisdiction from that list;
- (b) make provision, in relation to a jurisdiction listed in Schedule 4, for this Article not to apply to proceedings relating to claims of a description specified in the order;
- (c) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

Failure to give statement of employment particulars, etc.: Fair Employment Tribunal

28.—(1) This Article applies to proceedings before the Fair Employment Tribunal relating to a complaint by an employee under Article 38 of the Fair Employment and Treatment Order.

(2) If in the case of proceedings to which this Article applies—

- (a) the Fair Employment Tribunal finds in favour of the employee, but makes no award to him in respect of the complaint to which the proceedings relate, and
- (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order (duty to give a written statement of initial employment particulars or of particulars of change),

the Tribunal shall, subject to paragraph (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

- (3) If in the case of proceedings to which this Article applies—
- (a) the Fair Employment Tribunal makes an award to the employee in respect of the complaint to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the employee under Article 33(1) or 36(1) of the Employment Rights Order,
- the Tribunal shall, subject to paragraph (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.
- (4) In paragraphs (2) and (3)—
- (a) references to the minimum amount are to an amount equal to two weeks' pay, and
 - (b) references to the higher amount are to an amount equal to four weeks' pay.
- (5) The duty under paragraph (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that paragraph unjust or inequitable.
- (6) The amount of a week's pay of an employee shall—
- (a) be calculated for the purposes of this Article in accordance with Chapter IV of Part I of the Employment Rights Order; and
 - (b) not exceed the amount for the time being specified in Article 23 of that Order (maximum amount of week's pay).
- (7) For the purposes of Chapter IV of Part I of the Employment Rights Order as applied by paragraph (6), the calculation date shall be taken to be—
- (a) if the employee was employed by the employer on the date the proceedings were begun, that date, and
 - (b) if he was not, the effective date of termination as defined by Article 129 of that Order.
- (8) The Department may by order—
- (a) make provision for this Article not to apply to proceedings relating to complaints under Article 38 of a description specified in the order;
 - (b) make provision for this Article to apply, with or without modifications, as if—
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this Article were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

General

Unfair dismissal: adjustments under Articles 17 and 27

29. In the Employment Rights Order, after Article 158 there shall be inserted—

“Adjustments under the Employment (Northern Ireland) Order 2003

158A. Where an award of compensation for unfair dismissal falls to be—

- (a) reduced or increased under Article 17 of the Employment (Northern Ireland) Order 2003 (non-completion of statutory procedures); or
- (b) increased under Article 27 of that Order (failure to give statement of employment particulars),

the adjustment shall be in the amount awarded under Article 152(1)(b) and shall be applied immediately before any reduction under Article 157(6) or (7).”.

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.”.

PART VI

SUPPLEMENTARY

Regulations and orders

34.—(1) Regulations and orders under this Order may contain such incidental, supplementary, consequential or transitional provisions as the Department considers necessary or expedient.

(2) No order may be made under Part IV unless a draft of the order has been laid before and approved by resolution of the Assembly.

(3) No regulations or order may be made under Article 16, 17, 18, 19, 20, 21 or 22 unless a draft has been laid before and approved by resolution of the Assembly.

(4) Regulations under any other provision of this Order shall be subject to negative resolution.

Amendments and repeals

35.—(1) Schedule 5 (which makes consequential amendments) shall have effect.

(2) The statutory provisions mentioned in the first column of Schedule 6 are hereby repealed to the extent specified in the second column of that Schedule.

A. K. Galloway
Clerk of the Privy Council