



2011 CHAPTER 13

Dispute resolution procedures

Non-compliance with statutory Codes of Practice

4.—(1) The [Industrial Relations \(Northern Ireland\) Order 1992 \(NI 5\)](#) is amended as follows.

(2) After Article 90 insert—

“Effect of failure to comply with Code: adjustment of awards

90AA.—(1) This Article applies to proceedings before—

- (a) an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4A;
- (b) the Fair Employment Tribunal relating to a claim by an employee under Article 38 of the Fair Employment (Northern Ireland) Order 1998;

and references in this Article to “the tribunal” are to be read accordingly.

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

- (a) the claim to which the proceedings relate concerns a matter—
 - (i) to which a relevant Code of Practice applies, and
 - (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employer has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 50%.

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

- (a) the claim to which the proceedings relate concerns a matter—
 - (i) to which a relevant Code of Practice applies, and
 - (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employee has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 50%.

(4) In this Article—

“relevant Code of Practice” means a Code of Practice issued under Article 90 which relates exclusively or primarily to procedure for the resolution of disputes;

“statutory dispute resolution procedure” means a procedure set out in Part 1 of Schedule 1 to the Employment (Northern Ireland) Order 2003.

(5) Where an award falls to be adjusted under this Article and under Article 27 or 28 of the Employment (Northern Ireland) Order 2003, the adjustment under this Article shall be made before the adjustment under that Article.

(6) The Department may by order amend Schedule 4A for the purpose of—

- (a) adding a jurisdiction to the list in that Schedule, or
- (b) removing a jurisdiction from that list.

(7) No order shall be made under paragraph (6) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.”.

(3) In Article 107(2) after “90(14)” insert “, 90AA(6)”.

(4) After Schedule 4 insert as Schedule 4A the Schedule set out in Schedule 2 to this Act.