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STATUTORY INSTRUMENTS

1992 No. 807

The Industrial Relations (Northern Ireland) Order 1992

PART XI

MACHINERY FOR PROMOTING IMPROVEMENT OF INDUSTRIAL RELATIONS

The Labour Relations Agency

Constitution of the Labour Relations Agency

82.—(1) There shall continue to be a body called the Labour Relations Agency (in this Order referred to as “the Agency”).

(2) The constitution of the Agency shall be as provided in that behalf in Part I of Schedule 4, and the supplementary provisions contained in Part II of that Schedule shall have effect with respect to the Agency.

General function of the Agency

83.—(1) It shall be the duty of the Agency to promote the improvement of industrial relations^{F1}

(2) Without prejudice to the generality of paragraph (1), the Agency shall exercise such functions as are conferred on it by or under the following provisions of this Order and by any other statutory provision.

F1 1999 NI 9

Functions of the Agency in relation to trade disputes

84.—(1) Where the Agency apprehends that a trade dispute may occur it may take all steps which it considers appropriate for avoiding such trade dispute.

(2) Where a trade dispute exists the Agency may—

- (a) inquire into the causes and circumstances of the trade dispute;
- (b) form a view on the matter in dispute;
- (c) express, either publicly or to the parties to the dispute, the view it has formed on the matter in dispute;
- (d) assist the parties to the trade dispute to achieve a settlement of the dispute by conciliation or otherwise;
- (e) at any time, with the agreement of the parties, refer the matter for settlement to the arbitration of—

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- (i) one or more persons appointed by the Agency; or
- (ii) the Industrial Court;
- (f) at any time, with the agreement of the parties, refer the matter to one or more persons appointed by the Agency to inquire into the matter and report to the Agency thereon;
- (g) if it is satisfied that no appropriate agreed procedures for negotiation or the settlement of disputes exist between the parties, at any time, with the agreement of the parties, refer the dispute to a committee appointed in accordance with paragraph (3) whose function shall be to—
 - (i) inquire into the causes and circumstances of the dispute; and
 - (ii) seek the agreement of the parties to the dispute as to how it may be settled.
- (3) The committee referred to in paragraph (2)(g) shall consist of—
 - (a) a chairman appointed by the Agency; and
 - (b) such equal number of representatives of each party to the trade dispute as the Agency may determine.
- (4) In exercising its functions under paragraph (2)(d), the Agency shall have regard to the desirability of encouraging the parties to a dispute to use any appropriate agreed procedures for negotiation or the settlement of disputes.
- (5) In exercising its functions under paragraph (2)(e), the Agency shall consider the likelihood of the dispute being settled by conciliation and, where there exist appropriate agreed procedures for negotiation or the settlement of disputes, shall not refer a matter for settlement to arbitration under that sub-paragraph unless those procedures have been used and have failed to result in a settlement or unless, in the opinion of the Agency, there is a special reason which justifies arbitration under that sub-paragraph as an alternative to those procedures.
- (6) For the purpose of exercising its powers under paragraph (2)(e)(i) the Agency may maintain a register of persons who, having regard to their knowledge and experience, would, in the opinion of the Agency, be suitable for appointment by the Agency as arbitrators.
- (7) Nothing in paragraph (2) prejudices the operation of any other statutory provision conferring on a person or body a power to refer any matter connected with a trade dispute to arbitration or for inquiry or the right of the parties to the dispute to establish at any time appropriate procedures for negotiation or the settlement of disputes.
- (8) The Agency may pay to persons appointed under paragraph (2)(e)(i) or (f) or (3)(a) such fees and such allowances for expenses as the Agency, with the approval of the Department and the Department of Finance and Personnel, may determine.
- (9) ^[F2]Part I of the Arbitration Act 1996 shall not apply to any arbitration under this Article.

F2 1996 c.23

Modifications etc. (not altering text)

C1 Art. 84 applied (18.8.2006) by [European Cooperative Society \(Involvement of Employees\) Regulations 2006 \(S.I. 2006/2059\)](#), regs. 2, 39(2), **Sch. 3 para. 16**

[F3] Information required by the Agency for purposes of settling recognition disputes

84AA.—(1) This Article applies where the Agency is exercising its functions under Article 84 with a view to bringing about a settlement of a recognition dispute.

(2) The parties to the recognition dispute may jointly request the Agency or a person nominated by the Agency to do either or both of the following—

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- (a) hold a ballot of the workers involved in the dispute;
 - (b) ascertain the union membership of the workers involved in the dispute.
- (3) In the following provisions of this Article references to the Agency include references to a person nominated by the Agency; and anything done by such a person under this Article shall be regarded as done in the exercise of the functions of the Agency mentioned in paragraph (1).
- (4) At any time after the Agency has received a request under paragraph (2), it may require any party to the recognition dispute—
- (a) to supply the Agency with specified information concerning the workers involved in the dispute, and
 - (b) to do so within such period as it may specify.
- (5) The Agency may impose a requirement under paragraph (4) only if it considers that it is necessary to do so—
- (a) for the exercise of the functions mentioned in paragraph (1); and
 - (b) in order to enable or assist it to comply with the request.
- (6) The recipient of a requirement under this Article must, within the specified period, supply the Agency with such of the specified information as is in the recipient's possession.
- (7) A request under paragraph (2) may be withdrawn by any party to the recognition dispute at any time and, if it is withdrawn, the Agency shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.
- (8) If a party to a recognition dispute fails to comply with paragraph (6), the Agency shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.
- (9) Nothing in this Article requires the Agency to comply with a request under paragraph (2).
- (10) In this Article—
- “party”, in relation to a recognition dispute, means each of the employers, employer's associations and trade unions involved in the dispute;
 - “a recognition dispute” means a trade dispute between employers and workers which is connected wholly or partly with the recognition by employers or employers' associations of the right of a trade union to represent workers in negotiations, consultations or other procedures relating to any of the matters mentioned in sub-paragraphs (a) to (f) of Article 96(1);
 - “specified” means specified in a requirement under this Article; and
 - “workers” has the meaning given in Article 96(5).]

F3 2004 NI 19

[^{F4}Arbitration scheme for unfair dismissal cases etc.

84A.—(1) The Agency may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an industrial tribunal[^{F5} under, or] arising out of a contravention or alleged contravention of—

[Article 112G(1) or 112H(1)(b) of the Employment Rights (Northern Ireland) Order 1996
^{F5}(za) (flexible working);]

- (a) Part XI of[^{F6} that Order] (unfair dismissal); or
- (b) any statutory provision specified in an order made by the Department.

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(2) When the Agency has prepared such a scheme it shall submit a draft of the scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the scheme, and
- (b) making provision for it to come into effect.

(3) The Agency may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Department which, if it approves the scheme, shall make an order—

- (a) setting out the revised scheme, and
- (b) making provision for it to come into effect.

(4) The Agency may take any steps appropriate for promoting awareness of a scheme prepared under this Article.

(5) Where the parties to any dispute within paragraph (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this Article, the Agency shall refer the dispute to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).

(6) Nothing in the Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this Article except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.

(7) Where a scheme set out in an order under this Article includes provision for the making of re-employment orders in arbitrations conducted in accordance with the scheme, the order setting out the scheme may require industrial tribunals to enforce such orders—

- (a) in accordance with Article 151 of the Employment Rights (Northern Ireland) Order 1996 (enforcement by award of compensation), or
- (b) in accordance with that Article as modified by the order.

For this purpose “re-employment orders” means orders requiring that persons found to have been unfairly dismissed be reinstated, re-engaged or otherwise re-employed.

(8) An order under this Article setting out a scheme may provide that, in the case of disputes within paragraph (1)(a), such part of an award made in accordance with the scheme as is specified by the order shall be treated as a basic award of compensation for unfair dismissal for the purposes of Article 229(1)(d) of the Employment Rights (Northern Ireland) Order 1996 (which specifies such an award as a debt which the Department must satisfy if the employer has become insolvent).

(9) No order shall be made under paragraph (1)(b) unless a draft of the order has been laid before and approved by resolution of the Assembly.]

F4 1998 NI 8
F5 2002 NI 2
F6 2002 NI 2

[^{F7}Dismissal procedures agreements

84B. The Agency may, in accordance with any dismissal procedures agreement (within the meaning of the Employment Rights (Northern Ireland) Order 1996), refer any matter to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).]

F7 1998 NI 8

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Notification of procedural agreements

85.—(1) The Agency may request an employer to submit to it copies, or particulars, of procedural agreements to which he is a party and may receive and record such procedural agreements or particulars thereof.

(2) The Agency, after examining any procedural agreement or the particulars of any procedural agreement submitted to it under paragraph (1) may make such inquiries and seek such further information concerning that procedural agreement as the Agency thinks fit.

(3) In this Article “procedural agreement” means so much of a collective agreement as provides for procedures for the conduct of relations between workers or their representatives and employers and includes (without prejudice to the generality of the foregoing) so much of such an agreement as relates to—

- (a) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, terms and conditions of employment;
- (b) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, other questions arising between an employer or group of employers and one or more workers or trade unions;
- (c) negotiating rights;
- (d) facilities for officials of trade unions or other organisations of workers;
- (e) procedures relating to dismissal;
- (f) procedures relating to matters of discipline other than dismissal;
- (g) procedures relating to grievances of individual workers;
- (h) disclosure of information;
- (i) redundancy;
- (j) health and safety at work; and
- (k) promotion.

Review of collective bargaining arrangements

86.—(1) The Agency may review existing arrangements for the conduct of collective bargaining and may make recommendations to trade unions, employers and employers' associations concerning the introduction of arrangements for the conduct of collective bargaining or the improvement of existing arrangements.

(2) The Agency may review progress towards the institution of suitable arrangements for the conduct of collective bargaining and may send reports concerning such progress to appropriate trade unions, employers and employers' associations.

Industrial relations training

87.—(1) The Agency may—

- (a) review arrangements for industrial relations training in Northern Ireland;
- (b) advise employers, trade unions and the Department on training needs;
- (c) make recommendations to employers, trade unions, the Department and other interested bodies as to how training needs may best be met and in so doing may devise and propose training programmes;
- (d) co-ordinate by agreement, the activities of employers, employers' associations, trade unions and other interested bodies in the provision of industrial relations training in order

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to secure the most advantageous use of training resources for the fulfilment of identified training needs;

- (e) review progress in the fulfilment of identified training needs; and
- (f) obtain information about, and encourage the utilisation of developments in, training methods and techniques in respect of industrial relations training.

(2) The Department may make a grant of such amount as the Department, with the approval of the Department of Finance and Personnel, may determine towards defraying the expenses incurred by any undertaking or organisation in connection with industrial relations training.

(3) In this Article “industrial relations training” means training in any matter pertaining to the conduct of industrial relations.

Industrial relations research

88.—(1) Where the Agency thinks fit, or at the request of the Department, an employer, an employers' association or a trade union, the Agency may conduct research into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.

(2) The findings of any research under paragraph (1) together with any advice given by the Agency in connection with those findings, may be published by the Agency if—

- (a) it appears to the Agency that publication is desirable for the improvement of industrial relations, either generally or in relation to the specific question into which research was made; and
- (b) after sending a draft of the findings to, and taking into account the views of, all the parties appearing to the Agency to be concerned, the Agency thinks fit.

(3) The Department may make a grant of such amount as the Department, with the approval of the Department of Finance and Personnel, may determine towards defraying the expenses incurred by any undertaking or organisation in connection with—

- (a) the conduct of research into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking; and
- (b) the giving of advice based on such research.

[^{F8} Advice

89.—(1) The Agency may, on request or otherwise, give employers, employers' associations, workers and trade unions such advice as it thinks appropriate on matters concerned with or affecting or likely to affect industrial relations.

(2) The Agency may also publish general advice on matters concerned with or affecting or likely to affect industrial relations.]

F8 1995 NI 12

Codes of Practice

90.—(1) The Agency may issue Codes of Practice containing such practical guidance as the Agency thinks fit for the purpose of promoting the improvement of industrial relations[^{F9} or for purposes connected with trade union learning representatives].

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(2) Without prejudice to the generality of paragraph (1), the Agency shall, in one or more Codes of Practice, provide practical guidance on the following matters—

- (a) the disclosure of information, in accordance with Articles 39 and 40, by employers to trade union representatives for the purpose of collective bargaining;
- (b) the time off to be permitted by an employer—
 - (i) to a trade union official in accordance with^[F10] Article 92 of the Employment Rights (NI) Order 1996], including guidance on the circumstances in which a trade union official is to be permitted to take time off under that Article in respect of duties connected with industrial action; and
 - (ii) to a trade union member in accordance with^[F10] Article 94] of that Order, including guidance on the question whether, and the circumstances in which, a trade union member is to be permitted to take time off under that Article for trade union activities connected with industrial action.

(3) When the Agency proposes to issue a Code of Practice, it shall prepare and publish a draft of that Code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) If the Agency determines to proceed with the draft, it shall transmit the draft to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
 - (b) if it does not approve of the draft, publish details of its reasons for withholding approval.
- (5) In the case of a draft Code of Practice containing practical^[F9] guidance—
- (a) on the time off to be permitted to a trade union learning representative in accordance with Article 92A^[F11] (time off for training and carrying out functions as a learning representative);
 - (b) on the training that is sufficient to enable a trade union learning representative to carry on the activities mentioned in Article 92A(2)^[F11] (activities for which time off is to be permitted), or
 - (c) on any of the matters referred to in paragraph (2),]

, if the draft is approved by resolution of the Assembly the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(6) In the case of a draft Code of Practice not containing such practical guidance, if, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(8) If the Agency is of the opinion that the provisions of a Code of Practice to be issued under the preceding provisions of this Article will supersede the whole or part of a Code previously issued by it under this Article or by the Department under Article 95, it shall in the new Code state that on the day on which the new Code comes into effect in pursuance of an order under paragraph (5) or (7) the old Code or a specified part of it shall cease to have effect (subject to any transitional provisions or savings made by the order).

(9) The Agency may from time to time revise the whole or any part of a Code of Practice issued under this Article and issue that revised Code, and, subject to paragraph (10), paragraphs (3) to (7)

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shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.

(10) A Code of Practice issued under this Article may be revised by the Agency in accordance with paragraphs (11) to (13) for the purpose of bringing it into conformity with statutory provisions coming into operation after the Code was issued by the making of consequential amendments and the omission of obsolete passages.

(11) Where the Agency proposes to revise a Code under paragraph (10), it shall transmit a draft of the revised Code to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(12) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(13) If no such resolution is passed as is referred to in paragraph (12), the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(14) A Code of Practice issued under this Article may be revoked by an order made by the Department; but no such order shall be made—

- (a) except at the request of the Agency; and
- (b) unless a draft of the order has been laid before and approved by resolution of the Assembly.

(15) If the Agency requests the Department to revoke a Code of Practice issued under this Article and the Department decides not to do so, the Department shall publish details of its reasons for withholding approval.

(16) A failure on the part of any person to observe any provision of a Code of Practice issued under this Article shall not of itself render him liable to any proceedings; but in any proceedings before an industrial tribunal or the Industrial Court—

- (a) any such Code shall be admissible in evidence; and
- (b) any provision of the Code which appears to the tribunal or Industrial Court to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

(17) Without prejudice to Article 107(3), an order under paragraph (5), (7), (13) or (14) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the Code of Practice thereby brought into operation or (as the case may be) revoked.

F9 2003 NI 15

F10 1996 NI 16

F11 prosp. (until 15/01/06) insertion by 2005 NI 20

VALID FROM 03/04/2011

[^{F12}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;

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(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.]

F12 Art. 90AA inserted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\), ss. 4\(2\), 17\(1\); S.R. 2011/159, art. 2](#) (with Sch. para. 1)

[^{F13}Fees for exercise of functions by the Agency

90A.—(1) The Agency may, in any case in which it thinks it appropriate to do so, but subject to any directions under paragraph (2), charge a fee for exercising a function in relation to any person.

(2) The Department may direct the Agency to charge fees, in accordance with the direction, for exercising any function specified in the direction, but the Department shall not give a direction under this paragraph without consulting the Agency.

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(3) A direction under paragraph (2) may require the Agency to charge fees in respect of the exercise of a function only in specified descriptions of case.

(4) A direction under paragraph (2) shall specify whether fees are to be charged in respect of the exercise of any specified function—

- (a) at the full economic cost level, or
- (b) at a level less than the full economic cost but not less than a specified proportion or percentage of the full economic cost.

(5) Where a direction requires fees to be charged at the full economic cost level the Agency shall fix the fee for the case at an amount estimated to be sufficient to cover the administrative costs of the Agency of exercising the function including an appropriate sum in respect of general staff costs and overheads.

(6) Where a direction requires fees to be charged at a level less than the full economic cost the Agency shall fix the fee for the case at such amount, not being less than the proportion or percentage of the full economic cost specified under paragraph (4)(b), as it thinks appropriate (computing that cost in the same way as under paragraph (5)).

(7) No liability to pay a fee charged under this Article shall arise on the part of any person unless the Agency has notified that person that a fee may or will be charged.

(8) For the purposes of this Article—

- (a) a function is exercised “in relation to” a person who avails himself of the benefit of its exercise, whether or not he requested its exercise and whether the function is such as to be exercisable in relation to particular persons only or in relation to persons generally; and
- (b) where a function is exercised in relation to two or more persons the fee chargeable for its exercise shall be apportioned among them as the Agency thinks appropriate.]

F13 1995 NI 12

Status:

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