
STATUTORY INSTRUMENTS

1992 No. 807

The Industrial Relations (Northern Ireland) Order 1992

PART XII

MISCELLANEOUS AND SUPPLEMENTARY

Employee's individual rights

Written statements of terms of employment

97.—(1) Section 4 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965⁽¹⁾ (particulars of terms of employment) shall be amended as follows.

(2) In subsection (1A)—

- (a) for “subsections (1B) and (1C)” there shall be substituted “subsections (1C) and (1D)”;
- (b) the words from “and any reference in” to the end shall cease to have effect.

(3) The following subsection shall be inserted after subsection (1C)—

“(1D) The note which, by virtue of subsection (1A), is required to be included in a statement given to an employee under subsection (1) need not comply with the following provisions of subsection (1A), namely—

- (a) paragraph (a);
- (b) in paragraph (b), sub-paragraph (i) and the words following sub-paragraph (ii) so far as relating to sub-paragraph (i); and
- (c) paragraph (c),

if on the date when the employee's employment began the relevant number of employees was less than twenty; and in this subsection “the relevant number of employees”, in relation to an employee, means the number of employees employed by his employer added to the number of employees employed by any associated employer.”.

(4) In subsection (6A) for “section 4(1)” where it twice occurs there shall be substituted “subsection (1)”.

(5) The following subsection shall be inserted after subsection (6B)—

“(6C) Any reference in subsection (4), (6) or (6A) to the terms of employment which were to be, or were, included or referred to in a statement given under subsection (1) shall be construed as including a reference to any other matters falling within subsections (1) and (1A) of which particulars were to be given by that statement.”.

(6) The following subsection shall be substituted for subsection (7)—

“(7) No statement need be given under subsection (1) where—

- (a) the employee's employment began not more than six months after the end of earlier employment with the same employer;
- (b) a statement under that subsection, and any information subsequently required under subsection (4), was duly given to the employee in respect of his earlier employment; and
- (c) the terms of his present employment are the same as those of his earlier employment and any other matters falling within subsection (1A) of which particulars were to be given by that statement are also unchanged,

but without prejudice to the operation of subsection (4) if there is subsequently a change in his terms of employment or in any of those matters.”.

(7) In subsection (8)(c) for “section 4(1A)” there shall be substituted “subsection (1A)”.

(8) The following subsection shall be inserted after subsection (8)—

“(8A) If on the date when the employee's employment began the relevant number of employees was less than twenty, any reference in subsection (8)(c) to such a note as is there mentioned shall be construed as including a reference to such a note as is mentioned in subsection (1A) as it has effect with the omission of the provisions specified in subsection (1D)(a) to (c); and in this subsection “the relevant number of employees” has the meaning given by subsection (1D).”.

Time off for trade union duties

98.—(1) In Article 37(1) of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(2) (duty of employer to permit employee who is an official of an independent trade union recognised by employer to take time off to carry out certain trade union duties)—

(a) the following sub-paragraph shall be substituted for sub-paragraph (a)—

“(a) to carry out—

- (i) any duties of his, as such an official, which are concerned with negotiations with the employer that are related to or connected with any matters which fall within Article 2(4) of the Industrial Relations (Northern Ireland) Order 1992 and in relation to which the trade union is recognised by the employer; or
- (ii) any other duties of his, as such an official, which are concerned with the performance, on behalf of employees of the employer, of any functions that are related to or connected with any matters falling within that provision and that the employer has agreed may be so performed by the trade union; or”;

(b) in sub-paragraph (b)(i), for “those duties” there shall be substituted “any such duties as are mentioned in sub-paragraph (a)”.

(2) Paragraph (1) shall not affect the continued operation of Article 37 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(3) in a case where—

- (a) permission to take time off under Article 37 of that Order was requested before the coming into operation of paragraph (1); and
- (b) the time off in question was to begin not later than the end of the period of six weeks beginning with the coming into operation of that paragraph.

(2) 1976 NI 28

(3) 1976 NI 28

Period of employment necessary to qualify for statement of reasons for dismissal

99.—(1) In Article 48(2) of the No. 1 Order (employee not entitled to written statement of reasons for dismissal unless continuously employed for six months), for “six months” there shall be substituted “not less than two years”.

(2) The following paragraph shall be inserted after paragraph (2) of Article 48 of that Order—

“(2A) The Department may by order add to, vary, revoke or exclude the operation of paragraph (2).”.

(3) In Article 80(2) of that Order (orders) after “37A(7),” there shall be inserted “48(2A),”.

Industrial tribunal procedure

100.—(1) In Article 59 of the No. 1 Order (procedure of industrial tribunals) in paragraph (2) the following sub-paragraph shall be substituted for sub-paragraph (d)—

“(d) for enabling an industrial tribunal, on the application of any party to 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 an application by a party to proceedings before it;”.

(2) In that Article the following paragraphs shall be inserted after paragraph (2)—

“(2A) The regulations may include provision—

(a) for authorising a preliminary consideration of proceedings before an industrial tribunal (“a pre-hearing review”) to be carried out—

(i) by such person as may be determined by or in accordance with the regulations; or

(ii) if so determined in accordance with the regulations, by the tribunal itself; and

(b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the regulations.

(2B) The regulations may in particular include provision—

(a) for authorising any person or 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;

(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.

(2C) The Department may by order substitute for the sum specified in paragraph (2B)

(a) such other sum as is specified in the order.”.

(3) In Article 80 of the No. 1 Order (regulations and orders) the following paragraph shall be inserted after paragraph (2)—

“(2A) An order under Article 59(2C) shall be subject to negative resolution.”.

Action by an employer to enforce membership of union

101. The following provisions (which enable an employer to take action in certain circumstances to enforce trade union membership) shall cease to have effect, namely—

- (a) Article 22A(3) to (13) of the No. 1 Order;
- (b) Article 33(5) and (6) of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(4).

Ballots

Payments in respect of secret ballots

102.—(1) The Department may by regulations make a scheme (in this Article referred to as “the scheme”) providing for payments by the Certification Officer towards expenditure incurred by independent trade unions in respect of such ballots to which this Article applies as may be prescribed by the scheme.

(2) This Article applies to a ballot if the purpose of the question to be voted upon (or if there is more than one such question, the purpose of any of them) falls within the purposes mentioned in paragraph (3).

(3) The purposes referred to in paragraph (2) are—

- (a) obtaining a decision or ascertaining the views of members of a trade union as to the calling or ending of a strike or other industrial action;
- (b) carrying out an election provided for by the rules of a trade union or in relation to which Article 48 is required to be satisfied;
- (c) electing a worker who is a member of a trade union to be a representative of other members also employed by his employer;
- (d) amending the rules of a trade union;
- (e) obtaining a decision on a resolution for the purposes of Article 57;
- (f) obtaining a decision in accordance with Part X on a resolution to approve an instrument of amalgamation or transfer;
- (g) obtaining a decision or ascertaining the views of members of a trade union as to the acceptance or rejection of a proposal made by an employer in relation to the contractual terms and conditions upon which or the other incidents of a relationship whereby a person works or provides services for the employer;

and such other purposes as the Department may specify by order made subject to affirmative resolution.

(4) Notwithstanding anything in paragraphs (2) and (3), this Article does not apply to any ballot held by a trade union, if—

- (a) the purpose of any question to be voted upon is the obtaining of a decision of the kind mentioned in sub-paragraph (e) of paragraph (3); and
- (b) the ballot is held at a time when there is no resolution in force in respect of that union under Article 57.

(5) The scheme may include provision for payments to be made towards expenditure incurred by an independent trade union in respect of arrangements to hold a ballot which is not proceeded with but which, if it had been held, would have been a ballot to which this Article applies.

(6) The circumstances in which and the conditions subject to which payments may be made under the scheme, and the amounts of the payments, shall be such as may be prescribed by or determined in accordance with the scheme; and the scheme shall include provision for restricting the cases in which payments are made to cases in which the ballot is so conducted as to secure, so far as reasonably practicable, that those voting do so in secret.

(7) The Department shall pay to the Certification Officer such sums as he may require for making payments under the scheme.

Secret ballots on employer's premises

103.—(1) Subject to paragraph (3), where an independent trade union proposes that a relevant ballot be held and requests an employer to permit premises of his to be used for the purpose of giving workers employed by him who are members of the union a convenient opportunity of voting, the employer shall, so far as reasonably practicable, comply with the request unless the ballot is one in which every person who is entitled to vote must be given a convenient opportunity to vote by post.

(2) A ballot is a relevant ballot for the purposes of this Article if—

- (a) as respects the purpose of the question (or one of the questions) to be voted upon, the ballot satisfies the requirements of a scheme under Article 102; and
- (b) the proposals for the conduct of the ballot are such as to secure, so far as reasonably practicable, that those voting do so in secret.

(3) Paragraph (1) shall not apply where, at the time the request is made,—

- (a) the union is not recognised by the employer to any extent for the purpose of collective bargaining; or
- (b) the number of workers employed by the employer, added to the number employed by any associated employer, does not exceed twenty.

(4) A trade union may present a complaint to an industrial tribunal that it has made a request in accordance with paragraph (1) and that it was reasonably practicable for the employer to comply with it, but that he has failed to do so.

(5) An industrial tribunal shall not entertain a complaint under this Article unless it is presented to the tribunal before the end of the period of three months beginning with the date of the failure, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.

(6) Where a tribunal finds that a complaint under this Article is well-founded, the tribunal shall make a declaration to that effect, and may make an award of compensation to be paid by the employer to the union which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to comply with the request and to any expenses incurred by the union in consequence of the failure.

(7) The remedy of a trade union for a failure to comply with a request made in accordance with paragraph (1) shall be by way of a complaint under this Article and not otherwise.

(8) In this Article "post" has the same meaning as in Part VI.

Nominations by members of trade union

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104.—(1) Regulations may make provision—

- (a) for enabling members of trade unions who are not under sixteen years of age to nominate a person or persons to become entitled, on the death of the person making the nomination, to the whole or part of any money payable on his death out of the funds of the trade union of which he is a member; and
 - (b) for enabling any money payable out of the funds of a trade union on the death of a member of the trade union, to an amount not exceeding £5,000, to be paid or distributed on his death (whether in accordance with such a nomination or otherwise) without letters of administration or probate of any will.
- (2) Any regulations made in accordance with paragraph (1)(a)—
- (a) may include provision as to the manner in which nominations may be made and as to the manner in which nominations may be varied or revoked; and
 - (b) may provide that, subject to such exceptions as may be prescribed, no nomination made by a member of a trade union shall be valid if at the date of the nomination the person nominated is an officer or employee of the trade union or is otherwise connected with the trade union in such manner as may be prescribed.
- (3) Regulations made in accordance with paragraph (1)(a) may, without prejudice to Article 107(3), include provision for securing, to such extent and subject to such conditions as may be prescribed, that nominations made under the Trade Union Act Amendment Act 1876⁽⁵⁾ shall have effect as if made under the regulations and may be varied or revoked accordingly.
- (4) In paragraphs (2) and (3) “prescribed” means prescribed by regulations made in accordance with paragraph (1).
- (5) Paragraph (1)(b) shall be included among the provisions with respect to which the Department of Finance and Personnel may make an order under section 6(1) of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967⁽⁶⁾ substituting, for references to the amount for the time being provided for, references to such higher amount as may be specified in the order.

Crown employees and contracts, etc.

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105.—(1) Where any person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of—

- (a) the law relating to the liability in tort of any person who commits an act which—
 - (i) induces another person to break any contract, interferes with the performance of any contract or induces any other person to interfere with the performance of any contract; or
 - (ii) consists in a threat that a contract will be broken or its performance interfered with or that any person will be induced to break a contract or to interfere with its performance; and
 - (b) any statutory provision (including a provision of this Order) which refers, whether in relation to contracts generally or only in relation to contracts of employment, to any such act.
- (2) Articles 27 and 28 shall bind the Crown.

⁽⁵⁾ 1876 c. 22

⁽⁶⁾ 1967 c. 5 (N.I.)

(3) Articles 38, 39, 40, 41 and 65 (except paragraph (5)) and Part XI shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.

(4) Paragraphs (2) to (5) of Article 62 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976⁽⁷⁾ shall apply in relation to paragraph (3) as if that paragraph were contained in paragraph (1) of the said Article 62.

Fair Employment

Amendments to the Fair Employment (Northern Ireland) Acts

106.—(1) In Part III of the Fair Employment (Northern Ireland) Act 1976⁽⁸⁾ after section 32 there shall be inserted the following section—

“Restrictions on contracting out.

32A.—(1) Except as provided by subsection (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Part; or
- (b) to preclude any person from presenting a complaint to the Tribunal under section 24.

(2) Subsection (1) shall not apply to any agreement to refrain from instituting or continuing any proceedings before the Tribunal where the Labour Relations Agency has taken action in accordance with section 25(1) or (2).”.

(2) Section 32A of the Fair Employment (Northern Ireland) Act 1976⁽⁹⁾ (as inserted by paragraph (1)) applies in relation to agreements made before as well as after the coming into operation of that paragraph.

(3) In section 6 of the Fair Employment (Northern Ireland) Act 1989⁽¹⁰⁾ for subsection (3) there shall be substituted the following subsection—

“(3) Where a direction is made under subsection (2) that any matters shall be heard and determined by the Tribunal, then—

- (a) for the purpose of complying with that direction, the Tribunal shall, in relation to those matters, have the jurisdiction, and may exercise all the powers, of an industrial tribunal;
- (b) neither Article 29(2) of the Industrial Relations (Northern Ireland) Order 1976 nor Article 63(3) of the Sex Discrimination (Northern Ireland) Order 1976 shall apply in relation to the hearing and determination of those matters by the Tribunal;
- (c) Article 61 of the Industrial Relations (Northern Ireland) Order 1976 (recovery of, and interest on, sums awarded by industrial tribunals) shall apply in relation to any sum payable in pursuance of a decision of the Tribunal in relation to any such matters as it applies in relation to a sum payable in pursuance of a decision of an industrial tribunal; and
- (d) Article 31 of the Industrial Training (Northern Ireland) Order 1984 (appeals against decisions of industrial tribunals) shall apply in relation to a decision of the Tribunal in relation to any such matters as it applies in relation to a decision of an industrial tribunal.”.

(7) 1976 NI 28

(8) 1976 c. 25

(9) 1976 c. 25

(10) 1989 c. 32

Supplementary

Orders and regulations

107.—(1) Subject to paragraph (2), all orders and regulations under this Order shall be subject to negative resolution.

(2) Paragraph (1) does not apply to an order under Article 1(2), 72(7), 90(14), 95(12) or 102(3).

(3) Regulations and orders under this Order may contain incidental, supplementary and transitional provisions.

Amendments, revocations and repeals

108.—(1) The statutory provisions set out in Schedule 5 shall have effect subject to the amendments specified in that Schedule, being—

- (a) in the case of those specified in Part I of that Schedule, minor amendments and amendments consequential on this Order; and
- (b) in the case of those specified in Part II of that Schedule, amendments designed to facilitate, or otherwise desirable in connection with, the consolidation of statutory provisions relating to the individual rights of employees.

(2) In the Labour Relations Agency (Additional Functions) Order (Northern Ireland) 1977(**11**) the following provisions are hereby revoked, namely—

- (a) Article 4;
- (b) the Schedule, except paragraphs 5, 6(13) and 7(2).

(3) The statutory provisions set out in Schedule 6 are hereby repealed to the extent specified in the third column of that Schedule.