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## STATUTORY INSTRUMENTS

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# 1996 No. 1921

## The Industrial Tribunals (Northern Ireland) Order 1996

### *Conciliation*

#### **Conciliation**

**20.**—(1) This Article applies in the case of industrial tribunal proceedings and claims which could be the subject of industrial tribunal proceedings—

(a) under—

- (i) section 2(1) of the Equal Pay Act (Northern Ireland) 1970,
- (ii) Article 63 of the Sex Discrimination (Northern Ireland) Order 1976, or
- (iii) [<sup>F1</sup>section 17A or 25(8)] of the Disability Discrimination Act 1995;<sup>F2</sup> . . .

[<sup>F3</sup>(iv)] [<sup>F3</sup>Article 52 of the Race Relations (Northern Ireland) Order 1997;]<sup>F4</sup> . . .

[<sup>F2</sup>(v) regulation 34 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.]

[<sup>F5</sup>or

(vi) regulation 41 of the Employment Equality (Age) Regulations (Northern Ireland) 2006.]

(b) arising out of a contravention, or alleged contravention, of Article 31, 35<sup>F6</sup>, 38 or 60] of the Trade Union and Labour Relations (Northern Ireland) Order 1995;

(c) [<sup>F7</sup>under, or] arising out of a contravention, or alleged contravention, of any of the following provisions of the Employment Rights Order—

- (i) Article 26 or 27 (access to employment);
- (ii) Article 40 (itemised pay statement);
- (iii) Article 45, 47, 50(1) or 53(1) (protection of wages);
- (iv) Article 60 (guarantee payments);
- (v) Part VI (protection from detriment, etc. in employment);
- (vi) Part VII (time off work);
- (vii) Part VIII (suspension from work);

[<sup>F7</sup>(viii) Article 112G(1) or 112H(1)(b) (flexible working);]

(viii) Article 124 (written statement of reasons for dismissal);

(ix) Part XI (unfair dismissal);

[<sup>F6</sup>(ix) Article 170 (redundancy payment);]

(x) Article 216 or 218 (handling of redundancies and protective awards);

[<sup>F8</sup>Article 112(1) of the Employment Rights (Northern Ireland) Order 1996]

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- [<sup>F9</sup>(cc)] [<sup>F9</sup>under or by virtue of section 11, 18, 20(1)(b) or 24 of the National Minimum Wage Act 1998;]
- (d) which are proceedings in respect of which an industrial tribunal has jurisdiction by virtue of Article 5,<sup>F10</sup> . . .
- (e) [<sup>F7</sup>under, or] arising out of a contravention, or alleged contravention, of a provision specified by an order under paragraph (8)(b) as a provision to which this paragraph applies<sup>F11</sup> . . .
- [<sup>F10</sup>(f) under regulation 30 of the Working Time Regulation (Northern Ireland) 1998<sup>F12</sup> . . . ]
- [<sup>F11</sup>(g) under regulation 27 or 32 of the Transnational Information and Consultation of Employees Regulations 1999<sup>F13</sup> . . . ]
- [<sup>F12</sup>(h) arising out of a contravention, or alleged contravention, [<sup>F14</sup> of paragraph (1) of regulation 5 or paragraph (2) of regulation 7] of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000. [<sup>F13</sup> or]]
- [<sup>F13</sup>(i) arising out of a contravention, or alleged contravention, of regulation 3 or 6(2) of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002; or
- (j) under regulation 9 of those Regulations.]
- [<sup>F15</sup>(k) under regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003]
- [<sup>F16</sup>(l) under regulation 19 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.<sup>F17</sup> . . . ]
- [<sup>F18</sup>(m)] [<sup>F18</sup>under regulation 41 or 45 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004.]<sup>F19</sup> . . .
- [<sup>F17</sup>(n) under regulation 29 or 33 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005.]
- [<sup>F20</sup>, <sup>F21</sup> . . .
- (o) under paragraph 4 or 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006. ]<sup>F22</sup>[<sup>F23</sup> . . .
- (p) under regulation 45 or 51 of the Companies (Cross-Border Mergers) Regulations 2007][<sup>F24</sup>, or
- (q) under regulation 17 of the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008]
- [<sup>F25</sup>(r) under section 56 of the Pensions ( No. 2) Act (Northern Ireland) 2008. ][<sup>F26</sup>, <sup>F27</sup> . . .
- (s) under regulation 28 or 32 of the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I.2009/2402).][<sup>F28</sup>, <sup>F29</sup>...
- (t) arising out of a contravention, or alleged contravention of regulation 5, 12, 13 or 17(2) of the Agency Workers Regulations (Northern Ireland) 2011][<sup>F30</sup>, <sup>F31</sup>...]
- [<sup>F32</sup>(u) under regulation 22 of the Merchant Shipping (Hours of Work) Regulations 2002, or]
- [<sup>F33</sup>(v) under regulation 5, 6 or 9 of the Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014.]
- (2) Where an application has been presented to an industrial tribunal, and a copy of it has been sent to the Agency, it is the duty of the Agency—

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- (a) if it is requested to do so by the person by whom and the person against whom the proceedings are brought, or
- (b) if, in the absence of any such request, the Agency considers that it could act under this paragraph with a reasonable prospect of success,

to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.

(2A) <sup>F34</sup> .....

(3) Where at any time—

- (a) a person claims that action has been taken in respect of which proceedings could be brought by him before an industrial tribunal, but
- (b) before any application relating to that action has been presented by him a request is made to the Agency (whether by that person or by the person against whom the proceedings could be instituted) to make its services available to them,

the Agency [<sup>F35</sup> may endeavour to promote a settlement between the parties without proceedings being instituted.]

(4) Where a person who has presented a complaint to an industrial tribunal under Article 145 of the Employment Rights Order (unfair dismissal) has ceased to be employed by the employer against whom the complaint was made, the Agency shall (for the purpose of promoting a settlement of the complaint in accordance with paragraph (2)) in particular—

- (a) seek to promote the reinstatement or re-engagement of the complainant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the Agency to be equitable, and
- (b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the Agency to act, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.

[<sup>F36</sup>(5) Where the Agency acts pursuant to paragraph (3) in a case where the person claiming as specified in sub-paragraph (a) of that paragraph has ceased to be employed by the employer and the proceedings which he claims could be brought by him are proceedings under Article 145 of the Employment Rights Order, the Agency may in particular—

- (a) seek to promote the reinstatement or re-engagement of that person by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the Agency to be equitable, or
- (b) where the person does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to that person.]

(6) In proceeding under this Article the Agency shall, where appropriate, have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

(7) Anything communicated to the Agency in connection with the performance of its functions under this Article shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to the Agency.

(8) The Department may by order—

- (a) direct that further provisions of the Employment Rights Order be added to the list in paragraph (1)(c),
- (b) specify any other statutory provision as a provision to which paragraph (1)(e) applies.

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(9) This Article does not apply in respect of any period during which, by virtue of Article 11(5), an industrial tribunal may not proceed under the Employment Rights Order.

- F1 SR 2004/55
- F2 SR 2003/497
- F3 1997 NI 6
- F4 Word in art. 20(1)(a)(iv) repealed (1.10.2006) by S.R. 2006/261, reg. 53, Sch. 7 para. 4(a), **Sch. 8(1)** (with reg. 50)
- F5 Art. 20(1)(a)(vi) and preceding word inserted (1.10.2006) by S.R. 2006/261, reg. 53(1), **Sch. 7 para. 4(b)** (with reg. 50)
- F6 1998 NI 8
- F7 2002 NI 2
- F8 SR 2001/37
- F9 1998 c. 39
- F10 SR 1998/386
- F11 SI 1999/3323
- F12 SR 2000/219
- F13 SR 2002/298
- F14 SR 2001/319
- F15 SI 2003/3049
- F16 SI 2004/1713
- F17 SR 2005/47
- F18 SR 2004/417
- F19 Word in art. 20(1)(m) omitted (6.4.2006) by virtue of S.R. 2006/48, reg. 17, **Sch. para. 9(a)**
- F20 Art. 20(1)(o) and preceding word inserted (6.4.2006) by S.R. 2006/48, reg. 17, **Sch. para. 9(b)**
- F21 Word in art. 20(1) omitted (15.12.2007) by virtue of Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 52, **Sch. 2 para. 11**
- F22 Word in art. 20(1)(o) omitted (1.10.2008) by virtue of Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (S.R. 2008/315), reg. 19, **Sch. 3 para. 1(a)**
- F23 Art. 20(1)(p) and preceding word inserted (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 22(3), 52, **Sch. 2 para. 11**
- F24 Art. 20(1)(q) and preceding words inserted (1.10.2008) by Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (S.R. 2008/315), reg. 19, **Sch. 3 para. 1(b)**
- F25 Art. 20(1)(r) and word added (30.6.2012) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 56(6), 118(1)** (with s. 73); S.R. 2012/266, art. 2(b), Sch. Pt. 2; The "or" immediately preceding art. 20(1)(r) was omitted (1.10.2009) by S.I. 2009/2402, reg. 33 (with reg. 39) before it came into operation
- F26 Art. 20(1)(s) and preceding word inserted (1.10.2009) by virtue of European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), **reg. 33** (with reg. 39)
- F27 Word in art. 20(1) omitted (5.12.2011) by virtue of Agency Workers Regulations (Northern Ireland) 2011 (S.R. 2011/350), reg. 23(2), **Sch. 2 para. 18(a)**
- F28 Art. 20(1)(t) and preceding word inserted (5.12.2011) by Agency Workers Regulations (Northern Ireland) 2011 (S.R. 2011/350), reg. 23(2), **Sch. 2 para. 18(b)**
- F29 Word in art. 20(1)(s) omitted (17.3.2014) by virtue of The Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 (S.I. 2014/308), reg. 1(2), **Sch. para. 4(2)(a)**
- F30 Word in art. 20(1)(t) inserted (17.3.2014) by The Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 (S.I. 2014/308), reg. 1(2), **Sch. para. 4(2)(b)**
- F31 Word in art. 20(1)(t) omitted (6.4.2014) by The Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014 (S.R. 2014/88), **regs. 1, 17(4)(a)**
- F32 Art. 20(1)(u) substituted (7.8.2014) by The Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014 (S.I. 2014/1614), **regs. 1, 9**

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- F33** Art. 20(1)(v) and word inserted (6.4.2014) by [The Employment Relations \(Northern Ireland\) Order 1999 \(Blacklists\) Regulations \(Northern Ireland\) 2014 \(S.R. 2014/88\)](#), **regs. 1**, 17(4)(b)
- F34** Art. 20(2A) repealed (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), ss. 9(1), 16, 17(1), **Sch. 4**; S.R. 2011/159, **art. 2**
- F35** Words in art. 20(3) substituted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), **ss. 8(2)**, 17(1); S.R. 2011/159, **art. 2**
- F36** Art. 20(5) substituted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), **ss. 8(3)**, 17(1); S.R. 2011/159, **art. 2**

**Modifications etc. (not altering text)**

- C1** Art. 20 applied (6.4.2006 with application as mentioned in reg. 21(1) of the affecting Regulations) by [S.I. 2006/246](#), **regs. 12(7)**, 16(1), **Sch. 1 para. 10(3)(4)**  
 Art. 20 applied (6.4.2006 with application as mentioned in reg. 21(1)(2) of the affecting Regulations) by [S.R. 2006/177](#), **regs. 12(7)**, 16(1)

**Conciliation procedure**

**21.**—<sup>F37</sup>(1) Industrial tribunal procedure regulations shall include in relation to industrial tribunal proceedings in the case of which any statutory provision makes provision for conciliation—

- (a) provisions requiring a copy of the application by which the proceedings are instituted, and a copy of any notice relating to it which is lodged by or on behalf of the person against whom the proceedings are brought, to be sent to the Agency,<sup>F38</sup> and]
- (b) provisions securing that the applicant and the person against whom the proceedings are brought are notified that the services of the Agency are available to them,<sup>F39</sup> . . .

*Sub#para. (c) rep. by 2003 NI 15*

(2) <sup>F40</sup> .....

- F37** [2003 NI 15](#)
- F38** [2003 NI 15](#)
- F39** [2003 NI 15](#)
- F40** Art. 21(2) repealed (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), ss. 9(2), 16, 17(1), **Sch. 4**; S.R. 2011/159, **art. 2**

**<sup>F41</sup>Conciliation: recovery of sums payable under compromises**

**21A.**—(1) Paragraphs (3) to (6) apply if—

- (a) the Agency—
  - (i) has taken action under Article 20 in a case, and
  - (ii) issues a certificate in writing stating that a compromise has been reached in the case, and
- (b) all of the terms of the compromise are set out—
  - (i) in a single relevant document, or
  - (ii) in a combination of two or more relevant documents.

(2) A document is a “relevant document” for the purposes of paragraph (1) if—

- (a) it is the certificate, or
- (b) it is a document that is referred to in the certificate or that is referred to in a document that is within this sub-paragraph.

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(3) Any sum payable by a person under the terms of the compromise (a “compromise sum”) shall, subject to paragraphs (4) to (7), be recoverable as if the sum were payable under an order of the county court.

(4) A compromise sum is not recoverable under paragraph (3) if—

- (a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from him under the general law of contract, and
- (b) that declaration is made.

(5) If county court rules so provide, a compromise sum is not recoverable under paragraph (3) during the period—

- (a) beginning with the issue of the certificate, and
- (b) ending at such time as may be specified in, or determined under, county court rules.

(6) If the terms of the compromise provide for the person to whom a compromise sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by him under paragraph (3) only if a county court so orders.

(7) Once an application has been made for a declaration under paragraph (4) in relation to a sum, no further reliance may be placed on paragraph (3) for the recovery of the sum while the application is pending.

(8) An application for a declaration under paragraph (4) may be made to an industrial tribunal or a county court.

(9) Industrial tribunal procedure regulations may (in particular) make provision as to the time within which an application to an industrial tribunal for a declaration under paragraph (4) is to be made.

(10) County court rules may make provision as to—

- (a) the time within which an application to a county court for a declaration under paragraph (4) is to be made;
- (b) when an application (whether made to a county court or an industrial tribunal) for a declaration under paragraph (4) is pending for the purposes of paragraph (7).

(11) Nothing in this Article shall be taken to prejudice any rights or remedies that a person has apart from this Article.

(12) In this Article “compromise” (except in the phrase “compromise sum”) means a settlement, or compromise, to avoid proceedings or bring proceedings to an end.]

**F41** Art. 21A inserted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), **ss. 10**, 17(1); S.R. 2011/159, **art. 2**

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