
STATUTORY INSTRUMENTS

1998 No. 3162

**The Fair Employment and Treatment
(Northern Ireland) Order 1998**

PART XII

SUPPLEMENTARY

Power of High Court to revise contracts

99.—(1) Subject to paragraphs (2) and (3), where a term is included in or omitted from a contract in contravention of any provision of Part III or IV or in consequence of such a contravention, then, notwithstanding that the making of the contract is an unlawful act, neither the contract nor any part of it is unenforceable by reason only of the contravention.

(2) Where a complaint has been presented to the Tribunal under Article 38, the complainant or respondent may apply to the High Court to revise the contract or any of its terms.

(3) Where proceedings under Article 40 have been brought in the county court, the claimant or respondent may apply to the county court to revise the contract or any of its terms.

(4) On an application under paragraph (2) or (3) the High Court or, as the case may be, the county court, may make such order as it considers just in all the circumstances revising the contract or any of its terms so as to secure that, as from the date of the order, the contract in no way contravenes, or has any effect in consequence of a contravention of, any provision of Part III or IV.

(5) Where the High Court or the county court makes an order under paragraph (4), every party to the contract, whether or not a party in the action, shall be bound by the order; but the High Court or, as the case may be, the county court, shall not make such an order which affects a party to the contract who is not a party in the action without giving him an opportunity of being heard.

Restrictions on contracting out

100.—(1) Except as provided by paragraph (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 Order; or
- (b) to preclude any person from presenting a complaint to the Tribunal under Article 38.

(2) Paragraph (1) does not apply—

- (a) to an agreement settling a complaint to which Article 38(1) applies where the Agency has taken action in accordance with Article 88(1) or (2); or
- (b) to an agreement settling a complaint to which Article 38(1) applies if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement; or
- (c) to an agreement settling a claim to which Article 40 applies.

(3) The conditions regulating compromise agreements under this Order are that—

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- (a) the agreement must be in writing;
 - (b) the agreement must relate to the particular complaint;
 - (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his complaint before the Tribunal;
 - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
 - (e) the agreement must identify the adviser; and
 - (f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.
- (4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—
- (a) if he is a qualified lawyer;
 - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union;
 - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre; or
 - (d) if he is a person of a description specified in an order made by the Department.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the complainant—
- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party;
 - (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party;
 - (c) in the case of a person within paragraph (4)(c), if the complainant makes a payment for the advice received from him; or
 - (d) in the case of a person of a description specified in an order under paragraph (4)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (6) In paragraph (4)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (7) In paragraph (4)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.
- (8) For the purposes of paragraph (5) any two persons are to be treated as connected—
- (a) if one is a company of which the other (directly or indirectly) has control; or
 - (b) if both are companies of which a third person (directly or indirectly) has control.
- (9) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of paragraph (2)(a) and (b) as being an agreement settling a complaint if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 89; and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme; but

- (b) shall be regarded for those purposes as neither being nor including such an agreement in any other case.

[^{F1}Collective agreements and rules of undertaking

100A.—(1) This Article applies to—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by an organisation to which Article 23 applies for application to all or any of its members or prospective members; or
- (d) any rule made by a person to whom Article 25 applies for application to all or any of the persons on whom he has conferred qualifications or who are seeking the qualifications which he has power to confer.

(2) Any term or rule to which this Article applies is void where, as the case may be—

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of a provision referred to in Article 3(2B);
- (b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of such a provision; or
- (c) the term or rule provides for the doing of such an act.

(3) Paragraph (2) applies whether the agreement was entered into, or the rule made, before, on or after 10th December 2003; but in the case of an agreement entered into, or a rule made, before that date, that paragraph does not apply in relation to any period before that date.

(4) In this Article, and in Article 100B, "collective agreement" means any agreement relating to one or more of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992, being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.]

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Complaints relating to collective agreements and rules of undertaking

100B.—(1) A person to whom this paragraph applies may present a complaint to the Tribunal that a term or rule is void by virtue of Article 100A if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of Article 100A(2)(c), that—
 - (i) an act for the doing of which it provides may at some such time be done in relation to him, and
 - (ii) the act would be rendered unlawful by a provision referred to in Article 3(2B) if done in relation to him in present circumstances.

(2) In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
 - (i) an employer;
 - (ii) an organisation of employers of which an employer is a member; or

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(iii) an association of such organisations of one of which an employer is a member; or
 (b) a rule made by an employer referred to in Article 100A(1)(b);
 paragraph (1) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(3) In the case of a complaint about a rule made by an organisation to which Article 100A(1)(c) applies, paragraph (1) applies to any person who is, or is genuinely and actively seeking to become, a member of the organisation.

(4) In the case of a complaint about a rule made by a person to whom Article 100A(1)(d) applies, paragraph (1) applies to anyone—

- (a) on whom the person has conferred a qualification, or
- (b) who is genuinely and actively seeking a qualification which the person has power to confer.

(5) When the Tribunal finds that a complaint presented to it under paragraph (1) is well-founded the Tribunal shall make an order declaring that the term or rule is void.

(6) An order under paragraph (5) may include provision as respects any period before the making of the order (but after 10th December 2003).

(7) The avoidance by virtue of Article 100A(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself) namely—

- (a) such of the rights of the person to be discriminated against, and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

Power to amend this Order

101.—(1) The Department may by order—

- (a) amend any provision of Part III, IV, V or VIII so as to render lawful an act which, apart from the amendment, would be unlawful by reason of Article 19(1), 28(1) or 29;

Sub-para. (b) rep. by SR 2003/520

(2) The Department may by order provide that Article 6(3) shall have effect—

- (a) with the substitution for the words from “exploration” to “natural resources” of the words “any activity falling within section 11(2) of the Petroleum Act 1998”; and
- (b) with the insertion after “1964” of the words “or specified under section 10(8) of the Petroleum Act 1998”.

(3) The Department shall not lay before the Assembly the draft of an order under paragraph (1) unless it has consulted the Commission about the contents of the draft.

Offences by bodies corporate and partnerships

102.—(1) For the purposes of this Order section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and, where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(2) Where a partnership is guilty of an offence under this Order, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

Service of documents

103. For the purposes of this Order section 24 of the Interpretation Act (Northern Ireland) 1954 applies with the omission from subsection (1) of the word “registering”.

Regulations and orders

104.—(1) No regulations under Article 48(10), 53 or 54 or order under Article 6(3), 48(5), 71(6) or 101(1) shall be made unless a draft of the regulations or order has been laid before and approved by resolution of the Assembly.

(2) Regulations and orders made by the Department under any other provision of this Order (except orders under paragraph 1(5) or 2(7) of Schedule 1) shall be subject to negative resolution.

(3) Regulations and orders made by the Department under this Order may contain such incidental, supplementary, consequential and transitional provisions as the Department thinks fit.

Amendments, transitional provisions, savings and repeals

Para.(1)—Amendments

(2) The transitional provisions and savings set out in Schedule 4 shall have effect.

(3) The Department may by order make such other transitional provisions and savings as it thinks fit in connection with the coming into operation of any provision of this Order.

Para.(4)—Repeals

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