

# THE EMPLOYMENT (NORTHERN IRELAND) ORDER 2003

S.I. 2003 No. 2902 (N.I. 15)

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## EXPLANATORY MEMORANDUM

### COMMENTARY ON PROVISIONS

#### *Article 17: Non-completion of statutory procedure: adjustment of awards by industrial tribunals*

*Article 17* provides that, where the minimum statutory procedures specified under *Article 15* have not been followed, an award made by an industrial tribunal may be varied. The variation in the award, upward or downward according to the source of the procedural neglect, may be between 10-50%, except where this would be inequitable. Where exceptional circumstances may make a reduction or increase inequitable, the variation may be less than 10%, or nothing at all. In cases specified by the Department, exemptions from the need to follow statutory procedures are possible. The adjustments are to be made before reductions under *Article 27* for contributory fault or redundancy payments in excess of the basic award.

Together, the jurisdictions listed in *Schedule 2* cover the overwhelming majority of industrial tribunal claims. *Article 17* enables the Department to add to, or remove jurisdictions from the list. It also provides the Department with powers to make provision as to how the statutory procedures will apply for these purposes. These powers enable the Department in particular to specify circumstances where an employee or an employer is to be treated as having complied with a statutory procedure, even though none or only some of the required actions have been taken. Thus, the regulations could provide for exemptions from some of the requirements of the statutory procedures in particular circumstances.

The rationale behind this provision is to reduce the number of cases going forward to tribunal where employers or employees have failed to use existing internal workplace procedures. Once again, it is envisaged that costly and damaging litigation will be reduced by encouraging disputants to resolve their differences, where possible, in the workplace.