Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2003 No. (N.I.)

NORTHERN IRELAND

The Employment (Northern Ireland) Order 2003

Made - - - - 2003

Coming into operation in accordance with Article 1(2)

At the Court at Buckingham Palace, the ** day of ** 2003

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:–

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Employment (Northern Ireland) Order 2003.

(2) Parts II to V (with the Schedules) come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions and savings as the Department considers necessary or expedient in connection with the coming into operation of any of the provisions of this Order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"the Department" means the Department for Employment and Learning;

"employer" and "employee" have the same meanings as in the Employment Rights Order;

"the Employment Rights Order" means the Employment Rights (Northern Ireland) Order 1996 (NI 16);

"the Fair Employment and Treatment Order" means the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21);

"the Industrial Tribunals Order" means the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18);

"statutory procedure" means a procedure set out in Schedule 1;

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

PART II

INDUSTRIAL TRIBUNAL REFORM

Conciliation

3.—(1) In Article 9 of the Industrial Tribunals Order (industrial tribunal procedure regulations), in paragraph (3)(f) (power to prescribe the procedure to be followed in proceedings before an industrial tribunal), before sub-paragraph (ii) there shall be inserted—

"(ia) for postponing fixing a time and place for a hearing, or postponing a time fixed for a hearing, for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, and".

(2) In Article 20 of that Order (conciliation), after paragraph (2) there shall be inserted—

"(2A) Where industrial tribunal procedure regulations include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, paragraph (2) shall have effect from the end of the postponement to confer a power on the Agency, instead of imposing a duty."

(3) In Article 21 of that Order (conciliation procedure), paragraph (c) (which requires industrial tribunal procedure regulations, in relation to conciliation cases, to include provision postponing the hearing to give an opportunity for conciliation) shall cease to have effect.

(4) In that Article, the existing provision (as amended by paragraph (3)) shall become paragraph (1) and at the end there shall be inserted—

"(2) If industrial tribunal procedure regulations include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, they shall also include provision for the parties to proceedings to which the provision for postponement applies to be notified that the services of the Agency may no longer be available to them after the end of the postponement.".

Power to delegate prescription of forms, etc.

4. In Article 9 of the Industrial Tribunals Order (industrial tribunal procedure regulations), after paragraph (3) there shall be inserted—

"(3ZA) Industrial tribunal procedure regulations may—

(a) authorise the Department to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of instituting, or entering an appearance to, proceedings before industrial tribunals;

(b) authorise the Department to prescribe requirements in relation to documents to be supplied with any such form, and

(c) make provision about the publication of anything prescribed under authority conferred by virtue of this paragraph.".

Determination without a hearing

5. In Article 9 of the Industrial Tribunals Order (industrial tribunal procedure regulations) for paragraph (3A) there shall be substituted—

"(3A) Industrial tribunal procedure regulations may authorise the determination of proceedings without any hearing in such circumstances as the regulations may prescribe."

Practice directions

6. After Article 9 of the Industrial Tribunals Order there shall be inserted—

"**Practice directions**

9A.—(1) Industrial tribunal procedure regulations may include provision—

(a) enabling the President to make directions about the procedure of industrial tribunals, including directions about the exercise by tribunals of powers under such regulations;

(b) for securing compliance with such directions; and

(c) about the publication of such directions.

(2) Industrial tribunal procedure regulations may, instead of providing for any matter, refer to provision made or to be made about that matter by directions made by the President.

(3) In this Article, "the President" means the President of the Industrial Tribunals and the Fair Employment Tribunal."

Pre-hearing reviews

7.—(1) Article 11 of the Industrial Tribunals Order (pre-hearing reviews) shall be amended as follows.

(2) In paragraph (1) (power to make provision for pre-hearing reviews), for sub-paragraph (a) there shall be substituted—

"(a) for authorising an industrial tribunal to carry out a review of any proceedings before it at any time before a hearing held for the purpose of determining them (a "pre-hearing review"),".

(3) After paragraph (2) there shall be inserted—

"(2A) Regulations under paragraph (1)(b), so far as relating to striking out, may not provide for striking out on a ground which does not apply outside a pre-hearing review."

Costs, expenses and allowances

8.—(1) In Article 15 of the Industrial Tribunals Order (costs and expenses), for paragraph (1) there shall be substituted—

"(1) Industrial tribunal procedure regulations may include provision—

(a) for the award of costs or expenses;

(b) for the award of any allowances payable under Article 7(2)(c) or (3).

(1A) Regulations under paragraph (1) may include provision authorising an industrial tribunal to have regard to a person's ability to pay when considering the making of an award against him under such regulations.

(1B) Industrial tribunal procedure regulations may include provision for authorising an industrial tribunal—

(a) to disallow all or part of the costs or expenses of a representative of a party to proceedings before it by reason of that representative's conduct of the proceedings;

(b) to order a representative of a party to proceedings before it to meet all or part of the costs or expenses incurred by a party by reason of the representative's conduct of the proceedings;

(c) to order a representative of a party to proceedings before it to meet all or part of any allowances payable by the Department under Article 7(2)(c) or (3) by reason of the representative's conduct of the proceedings.

(1C) Industrial tribunal procedure regulations may also include provision for taxing or otherwise settling the costs or expenses referred to in paragraph (1)(a) or (1B)(b) (and, in particular for enabling such costs to be taxed in the county court).".

(2) After that Article there shall be inserted—

"**Payments in respect of preparation time**

15A.—(1) Industrial tribunal procedure regulations may include provision for authorising an industrial tribunal to order a party to proceedings before it to make a payment to any other party in respect of time spent in preparing that other party's case.

(2) Regulations under paragraph (1) may include provision authorising an industrial tribunal to have regard to a person's ability to pay when considering the making of an order against him under such regulations.

(3) If industrial tribunal procedure regulations include—

(a) provision of the kind mentioned in paragraph (1); and

(b) provision of the kind mentioned in Article 15(1)(a),

they shall also include provision to prevent an industrial tribunal exercising its powers under both kinds of provision in favour of the same person in the same proceedings.".

PART III

FAIR EMPLOYMENT TRIBUNAL REFORM

Power to delegate prescription of forms, etc.

9.—(1) In Article 84 of the Fair Employment and Treatment Order (regulations as to procedure of Fair Employment Tribunal), after paragraph (2) there shall be inserted—

"(2A) The regulations may—

(a) authorise the Department to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of instituting, or entering an appearance to, proceedings before the Tribunal;

(b) authorise the Department to prescribe requirements in relation to documents to be supplied with any such form, and

(c) make provision about the publication of anything prescribed under authority conferred by virtue of this paragraph.".

(2) In Article 84(2) of that Order, sub-paragraph (g) (forms for complaints under Article 38) shall cease to have effect.

Determination without a hearing

10.—(1) In Article 84 of the Fair Employment and Treatment Order (regulations as to procedure of Fair Employment Tribunal), after paragraph (2A) (inserted by Article 9) there shall be inserted—

"(2B) The regulations may authorise the determination of proceedings without any hearing in such circumstances as the regulations may prescribe.".

(2) In Article 84(9) of that Order after sub-paragraph (b) there shall be inserted—

"(c) any requirement imposed by virtue of regulations under this Article to give written answers for the purpose of facilitating the determination of proceedings as mentioned in paragraph (2B).".

Conciliation

11.—(1) In Article 84 of the Fair Employment and Treatment Order (regulations as to procedure of Fair Employment Tribunal), for paragraph (4) there shall be substituted—

"(4) In relation to proceedings on a complaint under Article 38 the regulations may include provision for postponing fixing a time and place for a hearing, or postponing a time fixed for a hearing, for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn.".

(2) In Article 88 of that Order (conciliation), after paragraph (1) there shall be inserted—

"(1A) Where regulations under Article 84 include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn—

(a) paragraph (1) shall have effect from the end of the postponement to confer a power on the Agency, instead of imposing a duty; and

(b) the regulations shall also include provision for the parties to proceedings to which the provision for postponement applies to be notified that the services of the Agency may no longer be available to them after the end of the postponement.".

Practice directions

12. After Article 84 of the Fair Employment and Treatment Order there shall be inserted—

"**Practice directions**

84A.—(1) Regulations under Article 84 may include provision—