STATUTORY RULES OF NORTHERN IRELAND

2012 No. 301

EMPLOYMENT

The Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012

Made - - - -	*26th July 2012*
Coming into operation	*27th September 2012*

Whereas:

(1) Under Article 84A(1) of the Industrial Relations (Northern Ireland) Order 1992(**1**) ("the 1992 Order") the Labour Relations Agency ("the Agency") may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an industrial tribunal under, or arising out of a contravention or alleged contravention of—

(a) Article 112G(1) or Article 112H(1)(b) of the Employment Rights (Northern Ireland) Order 1996(**2**) (flexible working);

(b) Part XI of that Order (unfair dismissal);

(c) any statutory provision specified in an order made by the Department for Employment and Learning(**3**) ("the Department");

(2) The Department has made the Labour Relations Agency Arbitration Scheme (Jurisdiction) Order (Northern Ireland) 2012(**4**) specifying certain statutory provisions;

(3) Under Article 89(1) of the Fair Employment and Treatment (Northern Ireland) Order 1998(**5**) ("the 1998 Order") the Agency may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before the Fair Employment Tribunal for Northern Ireland;

(4) In pursuance of Article 84A(1) of the 1992 Order and Article 89(1) of the 1998 Order, the Agency has prepared an arbitration scheme for cases referred to in paragraphs (1)(a) and (b), (2) and (3);

(5) In pursuance of Article 84A(2) of the 1992 Order and Article 89(2) of the 1998 Order, the Agency has submitted a draft of the scheme to the Department which has approved the scheme:

(**1**) S.I. 1992/807 (N.I. 5); Article 84A was inserted by Article 8 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)) and amended by paragraph 3 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(**2**) S.I. 1996/1919 (N.I. 16); Articles 112G and 112H were inserted by Article 15 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(**3**) Formerly the Department of Higher and Further Education, Training and Employment; *see*2001 c. 15 (N.I.)

(**4**) S.R. 2012 No. 302

(**5**) S.I. 1998/3162 (N.I. 21)

Now, therefore, the Department, in exercise of the powers conferred by Article 84A(2), (6), (7) and (8) of the 1992 Order and Article 89(2) and (6) of the 1998 Order, and now vested in it(**6**), makes the following Order:

Citation and commencement

1. This Order may be cited as the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012 and, subject to Article 3, shall come into operation on 27th September 2012.

Interpretation

2. In this Order—

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

"the Fair Employment Tribunal" means the Fair Employment Tribunal for Northern Ireland established under Article 81 of the Fair Employment and Treatment (Northern Ireland) Order 1998;

"the Scheme" means the arbitration scheme set out in the Schedule with the exception of paragraphs 40, 89, 108, 110 to 115, 119, 123 and 124.

Revocations and savings

3.—(1) Subject to the following paragraphs, the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2002(**7**) ("the 2002 Order") and the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006(**8**) ("the 2006 Order") are revoked.

(2) The 2002 Order shall continue to have effect in respect of any agreement concluded before 27th September 2012 to refer a dispute to arbitration in accordance with paragraph 12 of the Schedule to that Order.

(3) The 2006 Order shall continue to have effect in respect of any agreement concluded before 27th September 2012 to refer a dispute to arbitration in accordance with paragraph 13 of the Schedule to that Order.

Commencement of the Scheme

4. Subject to Article 3, the Scheme set out in the Schedule shall have effect.

Application of Part I of the Arbitration Act 1996

5. The provisions of Part I of the Arbitration Act 1996(**9**) referred to in paragraphs 40, 89, 108, 110 to 115, 119, 123 and 124 of the Schedule and reproduced in Appendix B of the Schedule shall apply with the modifications specified in those paragraphs to arbitrations conducted in accordance with the Scheme.

(**6**) *See*S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999
(**7**) S.R. 2002 No. 120
(**8**) S.R. 2006 No. 206
(**9**) 1996 c. 23

Application of Terms of Reference

6. Section 46(1)(b) of the Arbitration Act 1996, reproduced in Appendix B of the Schedule, shall apply to arbitrations conducted in accordance with the Scheme, modified such that the arbitral tribunal shall decide the dispute, if the parties so agree, in accordance with the Terms of Reference in paragraph 10 of the Schedule.

Sealed with the Official Seal of the Department for Employment and Learning on 26th July 2012.





Dr Stephen Farry
Minister for Employment and Learning

SCHEDULE Article 4

The Labour Relations Agency Arbitration Scheme

PART I

Introduction

1. The Labour Relations Agency Arbitration Scheme ("the Scheme") is implemented pursuant to Article 84A of the Industrial Relations (Northern Ireland) Order 1992(**10**) ("the 1992 Order") and Article 89 of the Fair Employment and Treatment (Northern Ireland) Order 1998(**11**) ("the 1998 Order").

2. The Scheme provides a voluntary alternative, in the form of arbitration, to—

(a) an industrial tribunal for the resolution of—

(i) unfair dismissal disputes;

(ii) disputes arising out of an employee's application for a change in his or her terms and conditions of employment made under Article 112F of the Employment Rights (Northern Ireland) Order 1996(**12**) ("the 1996 Order");

(iii) disputes arising out of the alleged contravention of any of the statutory provisions listed in the Schedule to the Labour Relations Agency Arbitration Scheme (Jurisdiction) Order (Northern Ireland) 2012(**13**);

(b) the Fair Employment Tribunal for the resolution of disputes involving proceedings under Article 38 of the 1998 Order, or claims which could be the subject of such proceedings, before that Tribunal.

3. Resolution of disputes under the Scheme is intended to be confidential, informal, relatively fast and cost efficient. Procedures under the Scheme are non-legalistic, and more flexible than an industrial tribunal, the Fair Employment Tribunal or the courts. For example (as explained in more detail below), the Scheme avoids the use of formal pleadings, formal witness and documentary procedures. Strict rules of evidence do not apply and general principles of fairness and good conduct are taken into account including, for example, principles referred to in any relevant Code of Practice. Arbitral decisions, including "awards", are final. There are specified opportunities to appeal or otherwise challenge the result.

4. The Scheme also caters for requirements imposed as a matter of law (e.g. the Human Rights Act 1998, existing domestic law in the field of arbitration and European Community (hereafter referred to as EC) law).

(**10**) S.I. 1992/807 (N.I. 5); Article 84A was inserted by Article 8 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)) and amended by paragraph 3 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**11**) S.I. 1998/3162 (N.I. 21)
(**12**) S.I. 1996/1919 (N.I. 16); Article 112F was inserted by Article 15 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) and amended by provisions of the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)
(**13**) S.R. 2012 No. 302

PART II

The role of the LRA

5. As more fully explained below, cases enter the Scheme by reference to the Labour Relations Agency (hereafter referred to as "the LRA"), which appoints an arbitrator from a panel (see paragraphs 32 to 34) to determine the dispute. The LRA provides administrative assistance during the proceedings. The LRA may scrutinise awards and refer any clerical or other similar errors back to the arbitrator. Disputes are determined, however, by arbitrators and not by the LRA.

Routing of communications

6. All communications between either party and the arbitrator other than in the course of the hearing shall be sent through the LRA.

7. Paragraph 120 sets out the manner in which any document, notice or communication must be served on, or transmitted to, the LRA.

PART III

Terms and abbreviations

8. In the Scheme –

"claimant" means any person entitled to pursue a qualifying claim;

"EC law" means:

(a) any provision in the domestic legislation of Northern Ireland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the European Community Treaties; and

(b) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such provision;

"qualifying claim" means a claim by the claimant arising out of a contravention, or alleged contravention, of—

(c) Part XI of the Employment Rights (Northern Ireland) Order 1996 (an unfair dismissal);

(d) Article 112G(1) or 112H(1)(b) of that Order (flexible working)(**14**);

(e) any of the statutory provisions listed in the Schedule to the Labour Relations Agency Arbitration Scheme (Jurisdiction) Order (Northern Ireland) 2012; or

(f) Article 38 of the Fair Employment and Treatment (Northern Ireland) Order 1998.

"respondent" means any person against whom a qualifying claim is pursued.

9. With the exception of paragraph 18(a) ("Requirements for entry into the Scheme") references to anything being written or in writing include its being recorded by any means so as to be usable for subsequent reference.

(**14**) Articles 112G and 112H were inserted by Article 15 of S.I. 2002/2836 (N.I. 2))