STATUTORY RULES OF NORTHERN IRELAND

2002 No. 298

EMPLOYMENT

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002

Made - - - -	*24th September 2002*
Approved by resolution of the Assembly - - - -	*23rd September 2002*
Coming into operation	*1st October 2002*

The Department for Employment and Learning(**1**), in exercise of the powers conferred by section 46 of the Employment Act 2002(**2**) and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

GENERAL AND INTERPRETATION

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 and shall come into operation on 1st October 2002.

(2) In these Regulations –

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996(**3**);

"collective agreement" means a collective agreement within the meaning of Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992(**4**);

"contract of employment" means a contract of service or of apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

"employee" means an individual who has entered into or works under or where the employment has ceased, worked under a contract of employment;

(**1**) Formerly known as the Department of Higher and Further Education, Training and Employment; renamed the Department for Employment and Learning by the Department for Employment and Learning Act (Northern Ireland) 2001 c. 15
(**2**) 2002 c. 22
(**3**) S.I. 1996/1919 (N.I. 16)
(**4**) S.I. 1992/807 (N.I. 5)

"employer", in relation to any employee, means the person by whom the employee is or where the employment has ceased, was employed;

"fixed-term contract" means a contract of employment that, under its provisions determining how it will terminate in the normal course, will terminate –

(a) on the expiry of a specific term,

on the completion of a particular task, or

(b) on the occurrence or non-occurrence of any other specific event other than the attainment by the employee of any normal bona fide retiring age in the establishment for an employee holding the position held by him,

and any reference to "fixed-term" shall be construed accordingly;

"fixed-term employee" means an employee who is employed under a fixed-term contract;

"permanent employee" means an employee who is not employed under a fixed-term contract, and any reference to "permanent employment" shall be construed accordingly;

"pro-rata principle" means that where a comparable permanent employee receives or is entitled to pay or any other benefit, a fixed-term employee is to receive or be entitled to such proportion of that pay or other benefit as is reasonable in the circumstances having regard to the length of his contract of employment and to the terms on which the pay or other benefit is offered;

"renewal" includes extension and references to renewing a contract shall be construed accordingly;

"workforce agreement" means an agreement between an employer and his employees or their representatives in respect of which the conditions set out in Schedule 1 to these Regulations are satisfied.

(3) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Comparable employees

2.—(1) For the purposes of these Regulations, an employee is a comparable permanent employee in relation to a fixed-term employee if, at the time when the treatment that is alleged to be less favourable to the fixed-term employee takes place –

(a) both employees are –

(i) employed by the same employer, and

(ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills; and

(b) the comparable employee works or is based at the same establishment as the fixed-term employee or, where there is no comparable employee working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.

(2) For the purposes of paragraph (1), an employee is not a comparable permanent employee if his employment has ceased.

(**5**) 1954 c. 33 (N. I.)

PART II

RIGHTS AND REMEDIES

Less favourable treatment of fixed-term employees

3.—(1) A fixed-term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee –

(a) as regards the terms of his contract; or

(b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) Subject to paragraphs (3) and (4), the right conferred by paragraph (1) includes in particular the right of the fixed-term employee in question not to be treated less favourably than the employer treats a comparable permanent employee in relation to –

(a) any period of service qualification relating to any particular condition of service,

(b) the opportunity to receive training, or

(c) the opportunity to secure permanent employment in the establishment.

(3) The right conferred by paragraph (1) applies only if –

(a) the treatment is on the ground that the employee is a fixed-term employee, and

(b) the treatment is not justified on objective grounds.

(4) Paragraph (3)(b) is subject to regulation 4.

(5) In determining whether a fixed-term employee has been treated less favourably than a comparable permanent employee, the pro-rata principle shall be applied unless it is inappropriate.

(6) In order to ensure that an employee is able to exercise the right conferred by paragraph (1) as described in paragraph (2)(c) the employee has the right to be informed by his employer of available vacancies in the establishment.

(7) For the purposes of paragraph (6) an employee is "informed by his employer" only if the vacancy is contained in an advertisement which the employee has a reasonable opportunity of reading in the course of his employment or the employee is given reasonable notification of the vacancy in some other way.

Objective justification

4.—(1) Where a fixed-term employee is treated by his employer less favourably than the employer treats a comparable permanent employee as regards any term of his contract, the treatment in question shall be regarded for the purposes of regulation 3(3)(b) as justified on objective grounds if the terms of the fixed-term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.

(2) Paragraph (1) is without prejudice to the generality of regulation 3(3)(b).

Right to receive a written statement of reasons for less favourable treatment

5.—(1) If an employee who considers that his employer may have treated him in a manner which infringes a right conferred on him by regulation 3 requests in writing from his employer a written statement giving particulars of the reasons for the treatment, the employee is entitled to be provided with such a statement within twenty-one days of his request.

(2) A written statement under this regulation is admissible as evidence in any proceedings under these Regulations.

(3) If it appears to the tribunal in any proceedings under these Regulations –

(a) that the employer deliberately, and without reasonable excuse, omitted to provide a written statement, or

(b) that the written statement is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that the employer has infringed the right in question.

(4) This regulation does not apply where the treatment in question consists of the dismissal of an employee, and the employee is entitled to a written statement of reasons for his dismissal under Article 124 of the 1996 Order(**6**).

Unfair dismissal and the right not to be subjected to detriment

6.—(1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part XI of the 1996 Order(**7**) if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, of his employer done on a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are –

(a) that the employee has –

(i) brought proceedings against the employer under these Regulations;

(ii) requested from his employer a written statement under regulation 5 or regulation 9;

(iii) given evidence or information in connection with such proceedings brought by any employee;

(iv) otherwise done anything under these Regulations in relation to the employer or any other person;

(v) alleged that the employer had infringed these Regulations;

(vi) refused (or proposed to refuse) to forgo a right conferred on him by these Regulations;

(vii) declined to sign a workforce agreement for the purposes of these Regulations, or

(viii) being—

(aa) a representative of members of the workforce for the purposes of Schedule 1, or

(bb) a candidate in an election in which any person elected will, on being elected, become such a representative,

performed (or proposed to perform) any functions or activities as such a representative or candidate, or

(b) that the employer believes or suspects that the employee has done or intends to do any of the things mentioned in sub-paragraph (a).

(4) Where the reason or principal reason for dismissal or, as the case may be, ground for subjection to any act or deliberate failure to act, is that mentioned in paragraph (3)(a)(v), or (b) so far as it relates

(**6**) Article 124 was amended by the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order (Northern Ireland) 1999 (S.R. 1999/277), Article 3 and by the Employment Relations (Northern Ireland) Order 1999 (N.I. 9), Article 11 and paragraph 6 of Part III of Schedule 4, and is amended by these Regulations, Schedule 2, paragraph 3(5)

(**7**) Part XI is amended by these Regulations, Schedule 2, to extend the circumstances in which, under Article 127, an employee is treated as dismissed for the purposes of that Part

thereto, neither paragraph (1) nor paragraph (2) applies if the allegation made by the employee is false and not made in good faith.

(5) Paragraph (2) does not apply where the detriment in question amounts to the dismissal of an employee within the meaning of Part XI of the 1996 Order.

Complaints to industrial tribunals etc.

7.—(1) An employee may present a complaint to an industrial tribunal that his employer has infringed a right conferred on him by regulation 3, or (subject to regulation 6(5)), 6(2).

(2) Subject to paragraph (3), an industrial tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning–

(a) in the case of an alleged infringement of a right conferred by regulation 3(1) or 6(2), with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them;

(b) in the case of an alleged infringement of the right conferred by regulation 3(6), with the date, or if more than one the last date, on which other individuals, whether or not employees of the employer, were informed of the vacancy.

(3) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of calculating the date of the less favourable treatment or detriment under paragraph (2)(a) –

(a) where a term in a contract is less favourable, that treatment shall be treated, subject to paragraph (b), as taking place on each day of the period during which the term is less favourable;

(b) a deliberate failure to act contrary to regulation 3 or 6(2) shall be treated as done when it was decided on.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of paragraph (4)(b) to decide not to act –

(a) when he does an act inconsistent with doing the failed act; or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to have done the failed act if it was to be done.

(6) Where an employee presents a complaint under this regulation in relation to a right conferred on him by regulation 3 or 6(2) it is for the employer to identify the ground for the less favourable treatment or detriment.

(7) Where an industrial tribunal finds that a complaint presented to it under this regulation is well founded, it shall take such of the following steps as it considers just and equitable –

(a) making a declaration as to the rights of the complainant and the employer in relation to the matters to which the complaint relates;

(b) ordering the employer to pay compensation to the complainant;

(c) recommending that the employer take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.

(8) Where a tribunal orders compensation under paragraph (7)(b), the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to –