
STATUTORY INSTRUMENTS

1999 No. 2790 (N.I. 9)

The Employment Relations (Northern Ireland) Order 1999 ^{F1}

- - - - - 12th October 1999

F1 functions transf. by SR 1999/481

Introduction

Title and commencement

- 1.—(1) This Order may be cited as the Employment Relations (Northern Ireland) Order 1999.
(2) This Order shall come into operation on such day or days as the Department may by order appoint^{F2}.

F2 partly exercised by SRs 1999/470; 2000/5, 122, 373; 2002/214, 317; 2003/332; 2005/394

Interpretation

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
(2) In this Order—
“the Department” means the Department of Economic Development;
“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996;
“the Trade Union and Labour Relations Order” means the Trade Union and Labour Relations (Northern Ireland) Order 1995.

Trade Unions

Collective bargaining: recognition

- 3.—(1) The Trade Union and Labour Relations Order shall be amended as follows.
(2) After Part IV there shall be inserted—

“PART IVA

COLLECTIVE BARGAINING: RECOGNITION

Recognition of trade unions

44A. Schedule 1A shall have effect.” .

(3) Immediately before Schedule 2 there shall be inserted the Schedule set out in Schedule 1 to this Order.

Detriment related to trade union membership

4. Schedule 2 shall have effect.

Blacklists

5.—(1) The Department may make regulations prohibiting the compilation of lists which—

- (a) contain details of members of trade unions or persons who have taken part in the activities of trade unions; and
- (b) are compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.

(2) The Department may make regulations prohibiting—

- (a) the use of lists to which paragraph (1) applies;
- (b) the sale or supply of lists to which paragraph (1) applies.

(3) Regulations under this Article may, in particular—

- (a) confer jurisdiction (including exclusive jurisdiction) on industrial tribunals;
- (b) include provision for or about the grant and enforcement of specified remedies by courts and tribunals;
- (c) include provision for the making of awards of compensation calculated in accordance with the regulations;
- (d) include provision permitting proceedings to be brought by trade unions on behalf of members in specified circumstances;
- (e) include provision about cases where an employee is dismissed by his employer and the reason or principal reason for the dismissal, or why the employee was selected for dismissal, relates to a list to which paragraph (1) applies;
- (f) create criminal offences;
- (g) in specified cases or circumstances, extend liability for a criminal offence created under sub-paragraph (f) to a person who aids the commission of the offence or to a person who is an agent, principal, employee, employer or officer of a person who commits the offence;
- (h) provide for specified obligations or offences not to apply in specified circumstances;
- (i) include consequential provision, including provision amending a statutory provision.

(4) Regulations under this Article creating an offence may not provide for it to be punishable—

- (a) by imprisonment;
- (b) by a fine in excess of level 5 on the standard scale in the case of an offence triable only summarily; or

(c) by a fine in excess of the statutory maximum in the case of summary conviction for an offence triable either on indictment or summarily.

(5) In this Article—

“list” includes any index or other set of items whether recorded electronically or by any other means; and

“worker” has the meaning given by Article 15.

(6) Subject to paragraph (5), expressions used in this Article and in the Trade Union and Labour Relations Order have the same meaning in this Article as in that Order.

Ballots and notices

6. Schedule 3 shall have effect.

Training

7.—(1) In Part IVA of the Trade Union and Labour Relations Order (collective bargaining: recognition) as inserted by Article 3, there shall be inserted after Article 44A—

“Training

44B.—(1) This Article applies where—

- (a) a trade union is recognised, in accordance with Schedule 1A, as entitled to conduct collective bargaining on behalf of a bargaining unit (within the meaning of Part I of that Schedule), and
- (b) a method for the conduct of collective bargaining is specified by the Industrial Court under paragraph 31(3) of that Schedule (and is not the subject of an agreement under paragraph 31(5)(a) or (b)).

(2) The employer must from time to time invite the trade union to send representatives to a meeting for the purpose of—

- (a) consulting about the employer's policy on training for workers within the bargaining unit,
- (b) consulting about his plans for training for those workers during the period of six months starting with the day of the meeting, and
- (c) reporting about training provided for those workers since the previous meeting.

(3) The date set for a meeting under paragraph (2) must not be later than—

- (a) in the case of a first meeting, the end of the period of six months starting with the day on which this Article first applies in relation to a bargaining unit, and
- (b) in the case of each subsequent meeting, the end of the period of six months starting with the day of the previous meeting.

(4) The employer shall, before the period of two weeks ending with the date of a meeting, provide to the trade union any information—

- (a) without which the union's representatives would be to a material extent impeded in participating in the meeting, and
- (b) which it would be in accordance with good industrial relations practice to disclose for the purposes of the meeting.

(5) Article 40(1) of the 1992 Order shall apply in relation to the provision of information under paragraph (4) as it applies in relation to the disclosure of information under Article 39 of that Order.

(6) The employer shall take account of any written representations about matters raised at a meeting which he receives from the trade union within the period of four weeks starting with the date of the meeting.

(7) Where more than one trade union is recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, a reference in this Article to “the trade union” is a reference to each trade union.

(8) Where at a meeting under this Article (Meeting 1) an employer indicates his intention to convene a subsequent meeting (Meeting 2) before the expiry of the period of six months beginning with the date of Meeting 1, for the reference to a period of six months in paragraph (2)(b) there shall be substituted a reference to the expected period between Meeting 1 and Meeting 2.

(9) The Department may by order amend any of paragraphs (2) to (6).

(10) No order shall be made under paragraph (9) unless a draft has been laid before, and approved by resolution of, the Assembly.

Article 44B: complaint to industrial tribunal

44C.—(1) A trade union may present a complaint to an industrial tribunal that an employer has failed to comply with his obligations under Article 44B in relation to a bargaining unit.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the date of the alleged failure, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded it—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to each person who was, at the time when the failure occurred, a member of the bargaining unit.

(4) The amount of the award shall not, in relation to each person, exceed two weeks' pay.

(5) For the purpose of paragraph (4) a week's pay—

- (a) shall be calculated in accordance with Chapter IV of Part I of the Employment Rights Order (taking the date of the employer's failure as the calculation date), and
- (b) shall be subject to the limit in Article 23(1) of that Order.

(6) Proceedings for enforcement of an award of compensation under this Article—

- (a) may, in relation to each person to whom compensation is payable, be commenced by that person, and
- (b) may not be commenced by a trade union.”.

(2) In Article 149(2) of the Trade Union and Labour Relations Order after “1(2),” there shall be inserted “ 44B(9), ”.

Unfair dismissal connected with recognition: interim relief

8. In Articles 163(1)(b) and 164(1) of the Employment Rights Order (interim relief) after “136(1)” there shall be inserted “or in paragraph 161(2) of Schedule 1A to the Trade Union and Labour Relations Order”.

Leave for family reasons, etc.

Maternity and parental leave

9. The provisions set out in Part I of Schedule 4 shall be substituted for Part IX of the Employment Rights Order.

Time-off for dependants

10. The provisions set out in Part II of Schedule 4 shall be inserted after Article 85 of the Employment Rights Order.

Consequential amendments

11. Part III of Schedule 4 (which makes amendments consequential on Articles 9 and 10) shall have effect.

Disciplinary and grievance hearings

Right to be accompanied

12.—(1) This Article applies where a worker—

- (a) is required or invited by his employer to attend a disciplinary or grievance hearing, and
- (b) reasonably requests to be accompanied at the hearing.

[^{F3}(2A) Where this Article applies, the employer must permit the worker to be accompanied at the hearing by one companion who—

- (a) is chosen by the worker; and
- (b) is within paragraph (3).

(2B) The employer must permit the worker's companion to—

- (a) address the hearing in order to do any or all of the following—
 - (i) put the worker's case;
 - (ii) sum up that case;
 - (iii) respond on the worker's behalf to any view expressed at the hearing;
- (b) confer with the worker during the hearing.

(2C) Paragraph (2B) does not require the employer to permit the worker's companion to—

- (a) answer questions on behalf of the worker;
- (b) address the hearing if the worker indicates at it that he does not wish his companion to do so; or
- (c) use the powers conferred by that paragraph in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.]

(3) A person is within this paragraph if he is—

- (a) employed by a trade union of which he is an official within the meaning of the Trade Union and Labour Relations Order,
- (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or