STATUTORY INSTRUMENTS

1988 No. 1988 (N.I. 21)

The Education (Academic Tenure) (Northern Ireland) Order 1988 [F1]

- - - - - - *14th November 1988*

Annotations:
F1 functions transf. by SR 1999/481

Title and commencement

1.—(1) This Order may be cited as the Education (Academic Tenure) (Northern Ireland) Order 1988.

(2) This Order shall come into operation on the expiration of 21 days from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F2] 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 Commissioners" means the University Commissioners for Northern Ireland;

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

"the Department" means the Department of Education;

"modifications" includes additions, alterations and omissions;

"qualifying institution" has the meaning assigned to it by Article 3(3);

"statutes", in relation to a qualifying institution, includes any regulations, ordinances or other instruments which, in the opinion of the Commissioners, serve as statutes for the purposes of that institution and are designated as such by the Commissioners.

Annotations:
F2 1954 c. 33 (NI)

The University Commissioners for Northern Ireland

3.—(1) There shall be a body of Commissioners known as the University Commissioners for Northern Ireland (in this Order referred to as "the Commissioners") who shall exercise, in accordance with paragraph (2), in relation to qualifying institutions, the functions assigned to them by this Order.

(2) In exercising those functions, the Commissioners shall have regard to the need—

(a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions;

(b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically; and

(c) to apply the principles of justice and fairness.

(3) The following are qualifying institutions for the purposes of this Order—

(a) The Queen's University of Belfast; and

(b) University of Ulster.

(4) The Schedule shall have effect with respect to the Commissioners.

Duty of Commissioners

4.—(1) The Commissioners shall exercise the powers conferred by Article 5 with a view to securing that the statutes of each qualifying institution include—

(a) provision enabling an appropriate body, or any delegate of such a body, to dismiss any member of the academic staff by reason of redundancy;

(b) provision enabling an appropriate officer, or any delegate of such an officer, acting in accordance with procedures determined by the Commissioners, to dismiss any member of the academic staff for good cause;

(c) provision establishing disciplinary procedures determined by the Commissioners for dealing with any complaints made against any member of the academic staff relating to his appointment or employment;

(d) provision establishing procedures determined by the Commissioners for hearing and determining appeals by any members of the academic staff who are dismissed or under notice of dismissal (whether or not in pursuance of such provision as is mentioned in sub# paragraph (*a*) or (*b*)) or who are otherwise disciplined; and

(e) provision establishing procedures determined by the Commissioners for affording to any member of the academic staff opportunities for seeking redress for any grievances relating to his appointment or employment.

(2) No provision such as is mentioned in paragraph (1)(*a*) or (*b*) which is included in the statutes of a qualifying institution by virtue of Article 5 shall enable any member of the academic staff to be dismissed unless the reason for his dismissal may in the circumstances (including the size and administrative resources of the institution) reasonably be treated as a sufficient reason for dismissing him.

(3) Any reference in this Article to academic staff includes a reference to persons whose terms of appointment or contracts of employment are, in the opinion of the Commissioners, so similar to those of academic staff as to justify their being treated as academic staff for the purposes of this Article.

(4) For the purposes of this Article the dismissal of a member of staff shall be taken to be a dismissal by reason of redundancy if it is attributable wholly or mainly to—

(a) the fact that the institution has ceased, or intends to cease, to carry on the activity for the purposes of which he was appointed or employed by the institution, or has ceased, or intends to cease, to carry on that activity in the place in which he carried out his work; or

(b) the fact that the requirements of that activity for members of staff to carry out work of a particular kind, or for members of staff to carry out work of a particular kind in that place, have ceased or diminished or are expected to cease or diminish.

(5) For the purposes of this Article "good cause" , in relation to a member of the academic staff of a qualifying institution, means a reason which is related to his conduct or to his capability or qualifications for performing work of the kind which he was appointed or employed to do; and in this paragraph—

(a) "capability", in relation to such a member, means capability assessed by reference to skill, aptitude, health or any other physical or mental quality; and

(b) "qualifications", in relation to such a member, means any degree, diploma or other academic, technical or professional qualification relevant to the office or position held by him.

(6) In this Article—

"appropriate", in relation to a body or officer of a qualifying institution, means appearing to the Commissioners to be appropriate having regard to the nature and circumstances of the institution;

"dismiss" and "dismissal"

(a) include remove or, as the case may be, removal from office; and

(b) in relation to employment under a contract of employment, shall be construed in accordance with**[**F3 Article 127 of the Employment Rights (Northern Ireland) Order 1996**]**.

Annotations:
F3 subst. 1996 NI 16

Powers of Commissioners

5.—(1) For the purpose of performing the duty imposed on them by Article 4, the Commissioners may make such modifications of the statutes of any qualifying institution as they consider necessary or expedient.

(2) Modifications made for the purpose of securing that the statutes of a qualifying institution comply with the requirements of Article 4(1)(*a*) shall not apply in relation to a person unless—

(a) his appointment is made, or his contract of employment is entered into, on or after 20th November 1987; or

(b) he is promoted on or after that date.

(3) For the purposes of this Article a person shall be taken to be promoted on or after 20th November 1987 if (and only if) immediately before that date he is paid on a scale which provides for a maximum rate of remuneration (his former pay scale) and on or after that date the terms of his appointment, or of his contract of employment, are varied (whether with effect before or after that date) so that—

(a) his rate of remuneration is increased to a rate which exceeds the highest point on his former pay scale at the date on which the increase takes effect; or

(b) he is paid on another scale on which the highest point at the date the variation takes effect exceeds the highest point on his former pay scale at that date; or

(c) he is paid on a basis which does not provide for a maximum rate of remuneration.

(4) For the purposes of paragraph (3) references, in relation to a pay scale, to the highest point on the scale at any date are references to the maximum rate of remuneration payable at that date in accordance with the scale whether on a regular or a discretionary basis.

(5) For the purposes of this Article a person holding an office or position of any description shall not be taken to be promoted by reason only of any general variation of the terms of appointment or of contracts of employment of persons holding offices or positions of that description.

(6) Modifications such as are mentioned in paragraph (2) shall not apply in relation to a person who held an office or position at the institution in question immediately before 20th November 1987 by reason only of the fact that—

(a) he is appointed to, or employed in, a different office or position at the institution instead of his former office or position if the terms of his appointment or of his contract of employment which relate to remuneration are the same as those of his former appointment or contract of employment;

(b) he is appointed to, or employed in, an additional office or position at the institution which carries no remuneration; or

(c) he is promoted or is appointed to, or employed in, a different office or position at the institution if he is so promoted, appointed or employed only on a temporary basis for a particular purpose with an expectation that the promotion will cease to have effect, or that he will resume his former office or position, when that purpose is accomplished.

(7) Modifications made for the purpose of securing that the statutes of a qualifying institution comply with the requirements of Article 4(1)(*b*) shall not apply in relation to anything done or omitted to be done before the date on which the instrument making the modifications is approved under paragraph (9).

(8) Subject to paragraphs (2) to (7), the Commissioners' powers under this Article include power to make such incidental, supplementary and transitional provision as they consider necessary or expedient.

(9) No instrument made in the exercise of the Commissioners' powers under this Article shall have effect unless it has been approved by Her Majesty in Council.

Procedure for exercise of Commissioners' powers

6.—(1) This Article applies where the Commissioners propose to exercise the powers conferred on them by Article 5 in relation to a qualifying institution.

(2) The Commissioners shall send a copy of the proposed modifications to each of the following persons, namely—

(a) the body appearing to the Commissioners to have responsibility for the management and administration of the institution's revenue and property and the conduct of its affairs;

(b) such bodies representing qualifying institutions as appear to them to be concerned;

(c) such organisations representing staff of such institutions as appear to them to be concerned;

(d) the Universities Funding Council and the Department; and

(e) such other persons appearing to the Commissioners to be concerned as they consider it would be appropriate to consult;

and shall afford those persons a reasonable opportunity of making representations as to the issues arising.

(3) After taking into account any representations made by those persons, the Commissioners shall submit the modifications, with or without revisions, to Her Majesty in Council.