

1995 No. 240

FAIR EMPLOYMENT

Fair Employment Tribunal (Remedies) Order
(Northern Ireland) 1995

Made 5th June 1995

Coming into operation 17th July 1995

The Department of Economic Development(a), in exercise of the powers conferred on it by section 26(6A) and (7) of the Fair Employment (Northern Ireland) Act 1976(b), section 6(3) of the Fair Employment (Northern Ireland) Act 1989(c), Article 61(3), (5) and (6) of the Industrial Relations (Northern Ireland) Order 1976(d) and of every other power enabling it in that behalf, with the approval of the Department of Finance and Personnel, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Fair Employment Tribunal (Remedies) Order (Northern Ireland) 1995 and shall come into operation on 17th July 1995.

Interpretation

2. In this Order—

“an award under the Act” means an order under section 26(1)(b) of the Act by virtue of which a sum is payable by the respondent to proceedings before the Tribunal to the complainant in those proceedings, but does not include an award of costs or expenses under rule 11 in Schedule 1 to the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 1989(e), even if made in the same proceedings as such an order;

“appellate court” means the High Court, the Court of Appeal or the House of Lords, as the case may be;

“interest” means, except in Article 15, interest included under Article 3(1)(a) or any sum awarded under the Act;

“the Act” means the Fair Employment (Northern Ireland) Act 1976(f);

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- (a) Formerly the Department of Manpower Services; see S.I. 1982/846 (N.I. 11) Article 3
(b) 1976 c. 25; section 26 was substituted by section 50(1) of the Fair Employment (Northern Ireland) Act 1989 c. 32 and amended by the Fair Employment (Amendment) (Northern Ireland) Order 1995 S.I. 1995/758 (N.I. 4)
(c) 1989 c. 32; as substituted by Article 106(3) of the Industrial Relations (Northern Ireland) Order 1992 S.I. 1992/807 (N.I. 5)
(d) S.I. 1976/1043 (N.I. 16)
(e) S.R. 1989 No. 445
(f) 1989 c. 32

“the 1992 Order” means the Fair Employment Tribunal (Interest) Order (Northern Ireland) 1992(a);

“tribunal” means the Fair Employment Tribunal for Northern Ireland or any tribunal which, by virtue of regulation 3(3) of the Fair Employment Tribunal Regulations (Northern Ireland) 1989(b), exercises the jurisdiction of that Tribunal.

Interest in awards under the Fair Employment (Northern Ireland) Act 1976

3.—(1) Where, at any time after this Order comes into operation, a tribunal makes an award under the Act—

(a) it may, subject to and in accordance with this Order, include interest on any sums so awarded; and

(b) it shall consider whether to do so, without the need for any application by a party in the proceedings.

(2) Nothing in paragraph (1) shall prevent the tribunal from making an award or decision, with regard to interest, in terms which have been agreed between the parties.

Rate of interest

4.—(1) Interest shall—

(a) subject to paragraph (2), be applied at the same rate as is in force, during the period for which it is to be calculated, in relation to decrees in the county court; and

(b) be calculated as simple interest which accrues from day-to-day.

(2) Where the rate of interest applied under paragraph (1)(a) has varied during a period for which interest is to be calculated, the tribunal may, if it so desires in the interests of simplicity, apply such median or average of those rates as seems to it appropriate.

Calculation of interest

5. Subject to Articles 8 to 12, in this Article and Articles 6 and 7, in relation to any award under the Act—

“day of calculation” means the day on which the amount of interest included on the sums so awarded is calculated by the tribunal;

“mid-point date” means the date half-way through the period beginning on the date of the act of discrimination to which the award relates and ending on the day of calculation (both dates inclusive).

6. Interest shall not be included on any sum awarded under the Act in relation to a loss or matter occurring after the day of calculation, or in respect of any time before the act of discrimination to which the award relates.

7.—(1) Subject to paragraphs (2) and (3)—

(a) S.R. 1992 No. 433

(b) S.R. 1989 No. 444

- (a) in the case of any sum awarded under the Act for injury to feelings, any interest included shall be for the period beginning on the date of the act of discrimination to which the award relates and ending on the day of calculation (both dates inclusive);
- (b) in the case of all other sums of damages or compensation in the award (other than any sum referred to in Article 6) any interest included shall be for the period beginning on the mid-point date and ending on the day of calculation (both dates inclusive).

(2) Where any payment has been made before the day of calculation to the complainant by or on behalf of the respondent in respect of any loss or matter to which an award under the Act relates, interest in respect of a corresponding part of the award shall be calculated as if the references in paragraph (1), and in the definition of "mid-point date" in Article 5, to the day of calculation were to the date on which the payment was made.

(3) Where the tribunal is of the opinion that in relation to an award under the Act—

- (a) there are exceptional circumstances, whether relating to the case as a whole or to a particular sum in the award, and
- (b) those circumstances have the effect that serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2),

it may—

- (i) calculate interest or, as the case may be, interest on the particular sum, for such different period, or
- (ii) calculate interest for such different periods in respect of various sums in the award,

as it considers appropriate in the circumstances, having regard to the provisions of this Order.

Reviews

8. Where a tribunal reviews an award under the Act and the effect of the review, or of any re-hearing which takes place as a result of the review, is that the sum so awarded is confirmed or varied, the day of calculation in relation thereto shall be the day when interest was first calculated in relation to the award which was subject to the review.

Decisions on Remission to a Tribunal

9. Where an appellate court remits a matter to a tribunal for reassessment of a sum, which would have been payable by virtue of an award under the Act made by the Tribunal or by an order of another appellate court, the day of calculation in relation thereto shall be the day when interest was first calculated in relation to the award which is subject to the reassessment.

Other Appeals

10. Where, on an appeal, or on a further appeal, relating to an award under the Act, an appellate court makes an order which confirms or varies a

sum which, but for the appeal, would have been payable by virtue of an award made under the Act, the day of calculation in relation thereto shall be the day when interest was first calculated in relation to the award which is subject to the appeal.

11. Where on an appeal from a determination of any issue by a tribunal which is not an award under the Act, or on any further appeal arising from such a determination—

- (a) an appellate court for the first time in relation to that issue makes an award under the Act, the day of calculation in relation thereto shall be the day on which interest was calculated in relation to the sum so awarded;
- (b) an appellate court confirmed or varies any award mentioned in sub-paragraph (a), the day of calculation in relation to that award should be the day when interest was first calculated in relation to the award which was confirmed or varied.

Variations of sums awarded

12. Where an amount payable by virtue of an award under the Act is varied under one of the procedures referred to in Articles 8 to 10 or 11(b), any reference in this Order to a sum awarded under the Act, shall be treated as if it was a reference to the amount as so varied.

Decision in writing

13.—(1) A tribunal's written statement of reasons for its decision to make an award under the Act shall contain a statement of the total amount of any interest included thereon and, unless this amount has been agreed between the parties, either a table showing how it has been calculated or a description of the manner in which it has been calculated.

(2) A tribunal's written statement of reasons shall include reasons for any decision not to award interest.

Appeal

14. Section 27 of the Act shall apply in relation to an appeal on a point of law from a decision of a tribunal relating to the inclusion or not of interest on an award as it applies in relation to such an appeal from any other decision of the tribunal relating to that award.

Interest for period after award

15. In relation to an award under the Act (including interest thereon)—

- (a) the 1992 Order shall apply as if, in Article 3, references to the calculation day were references to the day immediately following the relevant decision day and accordingly, subject to sub-paragraph (b), interest shall accrue under that Order from that day onwards (including that day); but
- (b) notwithstanding sub-paragraph (a), interest shall not be payable by virtue of the 1992 Order if payment of the full amount of the award

(including interest thereon) is made within 14 days after the relevant decision day.

Sealed with the Official Seal of the Department of Economic Development for Northern Ireland on 5th June 1995.

(L.S.)

W. D. A. Haire

Assistant Secretary

The Department of Finance and Personnel hereby approves the foregoing Order.

Sealed with the Official Seal of the Department of Finance and Personnel on 5th June 1995.

(L.S.)

D. W. Thomson

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order relates to cases where the Fair Employment Tribunal makes an order under section 26(1)(b) of the Fair Employment (Northern Ireland) Act 1976 for payment of compensation ("an award under the Act"). It comes into force on 17th July 1995.

Article 3 enables a tribunal which makes such an award to include a sum by way of interest on the amount awarded. Article 4 provides that such interest is to be calculated as simple interest which accrues from day-to-day, and prescribes the rates at which interest is to be calculated. Articles 5 to 12 contain other rules for the calculation of interest. In particular these provide that interest is not, in general, payable under this order in relation to any period after a tribunal has included interest on an award under the Act. In cases of where these awards have been reviewed, reassessed or subject to an appeal and, as a result, the award has been varied, interest is to be calculated on the award as varied. There is also provision for a tribunal to depart from these rules where it is of the opinion that there are exceptional circumstances which have the effect that serious injustice would be done if it were to apply these rules. Article 13 provides that written details must be given of the calculation of interest and that reasons must be given if no interest is awarded. Article 14 ensures that an appeal will lie to the Court of Appeal on any question of law relating to a decision to award or not to award interest.

Article 15 alters the effect of the Fair Employment Tribunal (Interest) Order (Northern Ireland) 1992 (including any interest awarded under Article 3 of that Order). In relation to such an award, interest will begin to accrue under that Order from the day after the day on which the tribunal's decision is sent to the parties (and not from a date 42 days later), but no interest will be payable under the Order if the full amount of the award is paid to the complainant within 14 days after the decision is sent out.