

2011 No. 159 (C. 8)

EMPLOYMENT

**The Employment Act (Northern Ireland) 2011 (Commencement
No. 1, Transitional Provisions and Savings) Order (Northern
Ireland) 2011**

Made - - - -

24th March 2011

The Department for Employment and Learning^(a) makes the following Order in exercise of the powers conferred by section 17 of the Employment Act (Northern Ireland) 2011^(b).

Citation and interpretation

1.—(1) This Order may be cited as the Employment Act (Northern Ireland) 2011 (Commencement No. 1, Transitional Provisions and Savings) Order (Northern Ireland) 2011.

(2) In this Order:

“the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996^(c);

“the 2003 Order” means the Employment (Northern Ireland) Order 2003^(d);

“the Regulations” means the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004^(e); and

“the Act” means the Employment Act (Northern Ireland) 2011.

Commencement

2. Subject to Article 3, sections 1 to 14 and 16 of, and Schedules 1, 2 and 4 to, the Act shall come into operation on 3rd April 2011.

Transitional provisions and savings

3. The transitional provisions and savings in the Schedule shall have effect.

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

(b) 2011 c. 13 (N.I.).

(c) S.I. 1996/1919 (N.I. 16), to which there are amendments not relevant to this Order.

(d) S.I. 2003/2902 (N.I. 15), as amended by the 2011 c. 13 (N.I.); there are other amendments not relevant to this Order.

(e) S.R. 2004 No. 521, to which there are amendments not relevant to this Order.

Sealed with the Official Seal of the Department for Employment and Learning on 24th March 2011.



Danny Kennedy
Minister for Employment and Learning

PART 1

Transitional Provisions and Savings

1. The following amendments and repeals made by the Act shall have effect subject to the provisions of paragraph 2—

- (a) in the 2003 Order—
 - (i) the repeal of Articles 16, 19, 20, 21 and 22;
 - (ii) the repeal of Part 2 and paragraph 15 of Schedule 1;
 - (iii) the repeal of Schedule 3;
 - (iv) the amendment of Articles 15(1) and 34(3), and paragraphs 11 and 14 of Schedule 1;
- (b) in the Industrial Relations (Northern Ireland) Order 1992^(a)—
 - (i) the insertion of Article 90AA;
 - (ii) the amendment of Article 107(2);
 - (iii) the insertion of Schedule 4A.

2.—(1) The amendments and repeals referred to in paragraph 1 shall not have effect where the standard grievance procedure or the modified grievance procedure applies by virtue of regulation 6 of the Regulations, and the action about which the employee complains (by complying with paragraph 6 or 9 of Schedule 1 to the 2003 Order, or presenting a complaint to a tribunal) occurs wholly before 3rd April 2011.

(2) The amendments and repeals referred to in paragraph 1 shall not have effect where the standard grievance procedure or the modified grievance procedure applies by virtue of regulation 6 of the Regulations and—

- (a) the action which forms the basis of a grievance begins on or before 2nd April 2011 and continues beyond that date; and
- (b) the employee presents a complaint to a tribunal or complies with paragraph 6 or 9 of Schedule 1 to the 2003 Order in relation to the grievance—
 - (i) on or before 2nd July 2011 under a jurisdiction listed in Part 2 of this Schedule and Article 144 of the 1996 Order^(b) does not apply;
 - (ii) on or before 2nd October 2011 under a jurisdiction listed in Part 2 of this Schedule and Article 144 of the 1996 Order applies;
 - (iii) on or before 2nd October 2011 under a jurisdiction listed in Part 3 of this Schedule.

3. The terms—

- “action”;
- “grievance”;
- “modified grievance procedure”;
- “standard grievance procedure”; and
- “tribunal”,

(a) S.I. 1992/807 (N.I. 5).

(b) Article 144 was amended by S.R. 1998 No. 386, regulation 32(5); S.I. 1999/2790 (N.I. 9), Schedule 4, Part 3, paragraph 11, Schedule 5, paragraphs 4 and 5 and Schedule 9; and S.I. 2004/3078 (N.I. 19), Article 20(9) and 21(4).

have the same meaning in this Order as they have in the Regulations.

PART 2

Tribunal Jurisdiction

Article 63 of the Sex Discrimination (Northern Ireland) Order 1976(a) (discrimination in the employment field)

Paragraph 156 of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995(b) (detriment in relation to union recognition rights)

Section 17A of the Disability Discrimination Act 1995(c) (discrimination in the employment field)

Article 55 of the Employment Rights (Northern Ireland) Order 1996(d) (unauthorised deductions and payments)

Article 71 of that Order (detriment in employment)

Article 74 of that Order (detriment in relation to union membership and activities)

Article 77A of that Order (inducements relating to union membership or activities)

Article 77B of that Order (inducements relating to collective bargaining)

Article 145 of that Order (unfair dismissal)

Article 52 of the Race Relations (Northern Ireland) Order 1977(e) (discrimination in the employment field)

Section 24 of the National Minimum Wage Act 1998(f) (detriment in relation to national minimum wage)

Regulation 30 of the Working Time Regulations (Northern Ireland) 1998(g) (breach of regulations)

Regulation 32 of the Transnational Information and Consultation of Employees Regulations 1999(h) (detriment relating to European Works Councils)

Regulation 34 of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003(i) (discrimination in the employment field)

Regulation 45 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004(j) (detriment in employment)

Regulation 33 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005(k) (detriment in employment)

Regulation 41 of the Employment Equality (Age) Regulations (Northern Ireland) 2006(l) (discrimination in the employment field)

(a) S.I. 1976/1042 (N.I. 15).

(b) S.I. 1995/1980 (N.I. 12).

(c) 1995 c. 50; section 17A was originally section 8 and renumbered by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (S.I. 2003/1673).

(d) S.I. 1996/1919 (N.I. 16).

(e) S.I. 1997/869 (N.I. 6).

(f) 1998 c. 39.

(g) S.R. 1998 No. 386.

(h) S.I. 1999/3323.

(i) S.R. 2003 No. 497.

(j) S.R. 2004 No. 417.

(k) S.R. 2005 No. 47.

(l) S.R. 2006/261.

Regulation 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006**(a)** (detriment in relation to involvement in a European Cooperative Society)

Paragraph 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006**(b)** (detriment in employment)

Regulation 51 of the Companies (Cross-Border Mergers) Regulations 2007**(c)** (detriment in relation to special negotiating body or employee participation)

Regulation 17 of the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008**(d)** (breach of regulations).

PART 3

Tribunal Jurisdictions

Section 2 of the Equal Pay Act (Northern Ireland) 1970**(e)** (equality clauses)

Article 198 of the Employment Rights (Northern Ireland) Order 1996**(f)** (redundancy payments)

Article 38 of the Fair Employment and Treatment (Northern Ireland) Order 1998**(g)** (discrimination in the employment field).

(a) S.I. 2006/2059.

(b) S.R. 2006 No. 48.

(c) S.I. 2007/2974; see Schedule 2 paragraph 10.

(d) S.R. 2008 No. 315.

(e) 1970 c. 32.

(f) S.I. 1996/1919 (N.I. 16).

(g) S.I. 1998/3162 (N.I. 21).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into operation the provisions of the Employment Act (Northern Ireland) 2011 (2011 c. 13 (N.I.)) (“the Act”) set out in Article 2. Those provisions come into operation on 3rd April 2011.

Sections 1 to 14 and 16 of and Schedules 1, 2 and 4 to the Act, which are commenced by this Order, make certain changes to the law relating to the resolution of disputes which arise in the workplace.

Section 1 of and Schedule 1 to the Act repeal the existing statutory grievance procedures introduced by the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15)). Section 2 repeals an unused provision of that Order concerning the statutory dispute resolution procedures and contracts of employment. Section 3 ends the connection between the statutory procedures relating to disciplinary and dismissal situations and time limits for lodging claims with an industrial tribunal or the Fair Employment Tribunal. The consequences of failure to comply with a relevant Code of Practice dealing with workplace grievances are established in section 4 and Schedule 2. The good practice set out in the Code supersedes the framework of statutory procedure in relation to these matters.

Section 5 makes provision dealing with the power to make industrial tribunal procedure regulations; specifically, it concerns the circumstances in which a tribunal may be empowered to determine proceedings without a hearing. Section 6 widens powers to restrict publicity in sensitive tribunal cases. Section 7 removes the requirement to seek a county court order for the purposes of enforcing an industrial tribunal award. Section 11 modifies Article 85 of the 1998 Order to allow the Fair Employment Tribunal, in specified circumstances, to assume the powers and functions of an industrial tribunal to deal with matters that would otherwise fall to be dealt with by an industrial tribunal.

Sections 8 and 12 extend greater discretion to the Labour Relations Agency in offering its conciliation service prior to a tribunal claim having been lodged. Sections 9 and 13 remove restrictions on the Agency’s duty to offer conciliation after a tribunal claim has been lodged. Sections 10 and 14 specify that certain sums payable under Agency conciliated settlements are to be treated as though payable under a county court order.

The Schedule to the Order contains transitional provisions. Paragraphs 1 and 2 have the effect that the repeal of the existing statutory grievance procedures and related repeals and amendments do not take effect in certain circumstances.

- The statutory grievance procedures continue to apply (where they currently apply) if the action about which the employee complains (by complying with step one of the grievance procedures or presenting a tribunal complaint) occurs wholly before the 3rd April 2011.
- The procedures also continue to apply (where they currently apply) if the action on which the grievance is based begins on or before the 2nd April 2011 and continues beyond that date, and the employee presents a tribunal complaint or complies with step one of the grievance procedures on or before either 2nd July 2011 or, in certain cases, 2nd October 2011.

Paragraph 3 of the Schedule contains a number of definitions which are relevant to the Order.

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