



# Employment Act (Northern Ireland) 2011

## 2011 CHAPTER 13

An Act to make provision about the procedures for the resolution of employment disputes and the procedures of industrial tribunals and the Fair Employment Tribunal; to make provision in relation to time off for study or training; and for connected purpose. [22nd March 2011]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### *Dispute resolution procedures*

#### **Repeal of statutory grievance procedures**

1.—(1) In the Employment (Northern Ireland) Order 2003 (NI 15) the following provisions (which relate to the statutory grievance procedures) are repealed—

- (a) Articles 19 and 20;
- (b) Part 2 of Schedule 1.

(2) Schedule 1 (which contains amendments consequential on subsection (1)) has effect.

#### **Commencement Information**

- II** [S. 1](#) wholly in operation at 3.4.2011, see [s. 17\(1\)](#) and [S.R. 2011/159](#), [art. 2](#) (subject to transitional provisions and savings in [art. 3](#), [Sch.](#))

---

*Status:* This version of this Act contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Employment Act (Northern Ireland) 2011. (See end of Document for details)

---

### **Statutory dispute resolution procedures: effect on contracts of employment**

**2** Article 16 of the Employment (Northern Ireland) Order 2003 (which provides for every contract of employment to have effect to require the employer and employee to comply with statutory dispute resolution procedures) is repealed.

#### **Commencement Information**

- I2** [S. 2](#) wholly in operation at 3.4.2011, see [s. 17\(1\)](#) and [S.R. 2011/159](#), [art. 2](#) (subject to transitional provisions and savings in [art. 3](#), [Sch.](#))

### **Statutory dispute resolution procedures: consequential adjustment of time limits**

**3** Articles 21 and 22 of the Employment (Northern Ireland) Order 2003 (which make provision about time limits for beginning proceedings where a statutory dispute resolution procedure applies) are repealed.

#### **Commencement Information**

- I3** [S. 3](#) wholly in operation at 3.4.2011, see [s. 17\(1\)](#) and [S.R. 2011/159](#), [art. 2](#) (subject to transitional provisions and savings in [art. 3](#), [Sch.](#))

### **Non-compliance with statutory Codes of Practice**

**4.—(1)** The Industrial Relations (Northern Ireland) Order 1992 (NI 5) is amended as follows.

(2) After Article 90 insert—

#### **“Effect of failure to comply with Code: adjustment of awards**

**90AA.—(1)** This Article applies to proceedings before—

- (a) an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4A;
- (b) the Fair Employment Tribunal relating to a claim by an employee under Article 38 of the Fair Employment (Northern Ireland) Order 1998;

and references in this Article to “the tribunal” are to be read accordingly.

(2) If, in the case of proceedings to which this Article applies, it appears to the tribunal that—

- (a) the claim to which the proceedings relate concerns a matter—
  - (i) to which a relevant Code of Practice applies, and

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Act (Northern Ireland) 2011. (See end of Document for details)*

- (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employer has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 50%.

(3) If, in the case of proceedings to which this Article applies, it appears to the tribunal that—

- (a) the claim to which the proceedings relate concerns a matter—
  - (i) to which a relevant Code of Practice applies, and
  - (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employee has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 50%.

(4) In this Article—

“relevant Code of Practice” means a Code of Practice issued under Article 90 which relates exclusively or primarily to procedure for the resolution of disputes;

“statutory dispute resolution procedure” means a procedure set out in Part 1 of Schedule 1 to the Employment (Northern Ireland) Order 2003.

(5) Where an award falls to be adjusted under this Article and under Article 27 or 28 of the Employment (Northern Ireland) Order 2003, the adjustment under this Article shall be made before the adjustment under that Article.

(6) The Department may by order amend Schedule 4A for the purpose of—

- (a) adding a jurisdiction to the list in that Schedule, or
- (b) removing a jurisdiction from that list.

(7) No order shall be made under paragraph (6) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.”.

(3) In Article 107(2) after “90(14)” insert “, 90AA(6) ”.

(4) After Schedule 4 insert as Schedule 4A the Schedule set out in Schedule 2 to this Act.

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Act (Northern Ireland) 2011. (See end of Document for details)*

#### Commencement Information

- I4** [S. 4](#) wholly in operation at 3.4.2011, see [s. 17\(1\)](#) and [S.R. 2011/159](#), [art. 2](#) (subject to transitional provisions and savings in [art. 3](#), [Sch.](#))

#### *Procedure: industrial tribunals*

#### **Determination of industrial tribunal proceedings without hearing**

**5** In the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18), in Article 9 (industrial tribunal procedure regulations), after paragraph (3A) insert—

“(3AA) Industrial tribunal procedure regulations under paragraph (3A) may only authorise the determination of proceedings without any hearing in circumstances where—

- (a) all the parties to the proceedings consent in writing to the determination without a hearing, or
- (b) the person (or, where more than one, each of the persons) against whom the proceedings are brought—
  - (i) has presented no response in the proceedings, or
  - (ii) does not contest the case.

(3AB) For the purposes of paragraph (3AA)(b), a person does not present a response in the proceedings if he presents a response but, in accordance with provision made by the regulations, it is not accepted.”.

#### Commencement Information

- I5** [S. 5](#) wholly in operation at 3.4.2011, see [s. 17\(1\)](#) and [S.R. 2011/159](#), [art. 2](#) (subject to transitional provisions and savings in [art. 3](#), [Sch.](#))

#### **Restriction of publicity**

**6.**—(1) Article 13 of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) is amended as follows.

(2) In the heading to the Article omit the words “in cases involving sexual misconduct”.

(3) For paragraph (1) substitute—

“(1) Industrial tribunal procedure regulations may include provision for cases to which this paragraph applies enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

*Status: This version of this Act contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Employment Act (Northern Ireland) 2011. (See end of Document for details)*

(1A) Paragraph (1) applies to cases—

- (a) involving allegations of sexual misconduct;
- (b) where the disclosure of identifying matter would be likely to cause—
  - (i) an individual (whether a party to the proceedings or not) to be subjected to harassment;
  - (ii) such an individual, or any property of such an individual, to be placed at risk of injury or damage; or
- (c) where, in the opinion of the tribunal, the interests of justice otherwise require.

(1B) Industrial tribunal procedure regulations may include provision, for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation.”.

(4) In paragraph (4) in the definition of “identifying matter” for “him as a person affected by, or as the person making, the allegation” substitute “ a party to the proceedings in question or such other persons (if any) as may be named in the restricted reporting order ”.

#### Commencement Information

**I6** S. 6 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Enforcement of sums payable

**7** In Article 17(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) for the words from “shall, if a county court so orders,” to the end substitute “ shall be enforceable as if it were payable under an order of the county court. ”.

#### Commencement Information

**I7** S. 7 wholly in operation at 3.4.2011, see s. 17(1) and S.R. 2011/159, art. 2 (subject to transitional provisions and savings in art. 3, Sch.)

#### Conciliation before bringing of proceedings

<sup>F1</sup>**8** .....