1991 No. 127

EDUCATION

The Education (Modification of Statutory Provisions Relating to Employment) Order (Northern Ireland) 1991

Made . . . . . *26th March 1991*

Coming into operation. . . . . . *1st April 1991*

The Department of Education, in exercise of the powers conferred on it by Article 116 of, and paragraph 9 of Schedule 4 to, the Education Reform (Northern Ireland) Order 1989(**a**), and of every other power enabling it in that behalf, and after consulting—

(*a*) the boards;

(*b*) the Council for Catholic Maintained Schools;

(*c*) the Boards of Governors of maintained schools (other than Catholic maintained schools) or a body representing their interests;

(*d*) such organisations representing staff in schools required to be covered by schemes under Article 46 of that Order or in institutions of further education as appeared to the Department to be concerned;

(*e*) such other persons as the Department thought fit,

hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Education (Modification of Statutory Provisions Relating to Employment) Order (Northern Ireland) 1991 and shall come into operation on 1st April 1991.

Interpretation

2. In this Order—

(*a*) "the 1989 Order" means the Education Reform (Northern Ireland) Order 1989;

"Board of Governors" means the Board of Governors for the time being of a controlled or maintained school and references to a board in relation to Boards of Governors are references to the

(**a**) S.I. 1989/2406 (N.I. 20).

board responsible for the management of the school if the school is a controlled school or the board by which the school is maintained if the school is a maintained school; and

"governing body" means the governing body for the time being of an institution of further education (including any technical secondary school conducted in association with the institution) and references to a board in relation to governing bodies are references to the board for the area in which the institution of further education is situated;

(*b*) references to employment powers are references, in the case of Boards of Governors, to the powers as to the determination of staff complements, discipline, suspension and dismissal of staff conferred by or under Article 58 of, and Schedule 4 to, the 1989 Order and, in the case of governing bodies, to the powers in relation to staff conferred by or under Articles 114 and 115 of that Order;

(*c*) references to Boards of Governors with delegated budgets are references to Boards of Governors to which powers as to the expenditure of the budget share of the school for which they are responsible are for the time being delegated by virtue of Articles 50 and 52 of the 1989 Order; and

(*d*) references to governing bodies with delegated budgets are references to governing bodies to which powers as to the expenditure of the budget share of the institution for which they are responsible are for the time being delegated by virtue of Article 109 of the 1989 Order.

General modifications of statutory provisions relating to employment

3.—(1) In their application to Boards of Governors with delegated budgets or, as the case may be, governing bodies with delegated budgets, the statutory provisions set out in the Schedule shall have effect as if—

(*a*) any reference (however expressed) to an employer or a principal included a reference to the Board of Governors or, as the case may be, governing body acting in the exercise of its employment powers and as if that Board of Governors or, as the case may be, governing body had at all material times been such an employer or principal;

(*b*) in relation to the exercise of the employment powers of the Board of Governors or, as the case may be, governing body, employment by the board at a school or institution of further education or, in relation to a teacher at a Catholic maintained school, employment by the Council for Catholic Maintained Schools were employment by the Board of Governors of that school or, as the case may be, governing body of that institution;

(*c*) references to employees were references to employees at the school or institution in question;

(*d*) references to dismissal by an employer included references to dismissal by the board or, in relation to a teacher at a Catholic

maintained school, the Council for Catholic Maintained Schools following notification of a determination by a Board of Governors under paragraph 5(1) of Schedule 4 to the 1989 Order or a governing body under Article 114(4) of that Order; and

(*e*) references to trade unions recognised by an employer were references to trade unions recognised by the board, the Council for Catholic Maintained Schools (in relation to teachers at Catholic maintained schools), or the Board of Govenors or, as the case may be, governing body.

(2) Nothing in paragraph (1) shall be taken as causing the Board of Governors or, as the case may be, governing body to meet the conditions stated in—

(*a*) Article 24A(1) of the Industrial Relations (Northern Ireland) Order 1976(**a**);

(*b*) Article 30A(1)(*a*) of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(**b**); or

(*c*) Article 4(3)(*b*) of the Industrial Relations (Northern Ireland) Order 1982(**c**),

if it would not have done so but for the operation of that paragraph.

Dismissals

4. Without prejudice to the generality of Article 3, where an employee employed at a school with a Board of Governors with a delegated budget or, as the case may be, an institution of further education with a governing body with a delegated budget is dismissed by the board or, in the case of a teacher at a Catholic maintained school, the Council for Catholic Maintained Schools following notification of such a determination by a Board of Governors or governing body as is mentioned in Article 3(1)(*d*)—

(*a*) Article 48 of the Industrial Relations (Northern Ireland) Order 1976(**d**) shall have effect as if the Board of Governors or, as the case may be, governing body had dismissed him and as if references to the employer's reasons for dismissing the employee were references to the reasons for which the Board of Governors or, as the case may be, governing body made its determination; and

---

(**a**) S.I. 1976/1043 (N.I. 16). Article 24A was inserted by Article 10(1) of the Industrial Relations (Northern Ireland) Order 1982 (S.I. 1982/528 (N.I. 8)) and amended by paragraph 4(3) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987 (S.I. 1987/936 (N.I. 9)).

(**b**) S.I. 1976/2147 (N.I. 28). Article 30A(1)(*a*) was inserted by Article 14 of the Industrial Relations (Northern Ireland) Order 1982.

(**c**) S.I. 1982/528 (N.I. 8).

(**d**) Article 48(2) was amended by paragraph 6 of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1987 (S.I. 1987/936 (N.I. 9)).

(*b*) Articles 20 to 41 (excluding Article 24A(2)(*c*)) and 59(5) and (6) of the Industrial Relations (Northern Ireland) Order 1976(**a**) and Articles 9(4), 13, 14, 30, 30A(1) to (3) and (5) and 31 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(**b**) shall

---

(**a**) Paragraphs (5) to (7) of Article 21 were substituted by paragraph 4(1) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987 and paragraphs (3) to (11) of Article 22 were substituted by Article 5(1) of that Order. Article 22A was substituted by Article 5(2) of the Industrial Relations (Northern Ireland) Order 1987. Articles 22B and 22C were inserted, and Article 23 substituted, by Article 5(2) of the Industrial Relations (Northern Ireland) Order 1987. Article 24(1) was amended by Schedule 3 to the Industrial Relations (Northern Ireland) Order 1982, Article 3(1) of the Unfair Dismissal (Variation of Qualifying Period) Order (Northern Ireland) 1985 (S.R. 1985 No. 279), paragraph 5(1) of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1987 and Article 5(1) of the Sex Discrimination (Northern Ireland) Order 1988 (S.I. 1988/1303 (N.I. 13)). Article 24(2) was amended by paragraph 4(2) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987 and Article 24(3) by Schedule 2 to the Industrial Relations (Northern Ireland) Order 1982. Article 24A was inserted by Article 10(1) of the Industrial Relations (Northern Ireland) Order 1982 and amended by paragraph 4(3) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987. The operation of Article 24A(1) is excluded by Article 3(2) of the Unfair Dismissal (Variation of Qualifying Period) Order (Northern Ireland) 1985. Article 25 was amended by Article 10(2) of the Industrial Relations (Northern Ireland) Order 1982. Article 27(1) was repealed by Schedule 3 and Article 27(2) was amended by Schedule 2 to that Order. Article 29 was amended by paragraph 5(5) of Schedule 4 to the Industrial Relations (No. 2) (Northern Ireland) Order 1976, by paragraph 4(4) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987 and by paragraph 31 of Schedule 2 to the Fair Employment (Northern Ireland) Act 1989 (c. 32). Article 32(2) was amended by Article 7(1) of, and paragraph 4(5) of Schedule 3 to, the Industrial Relations (Northern Ireland) Order 1987, Article 32(3)(*a*) was repealed by Schedule 4 to that Order and Article 32(3)(*c*) was inserted by paragraph 32 of Schedule 2 to the Fair Employment (Northern Ireland) Act 1989. Paragraphs (5) and (6) of Article 32 were amended by paragraph 4(5) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987 and paragraph (8) by the Industrial Relations (Variation of Limits) Order (Northern Ireland) 1991 (S.R. 1991 No. 65). Article 33 was substituted by Article 7(2) of the Industrial Relations (Northern Ireland) Order 1987 and Article 33A was inserted by Article 8 of that Order. Article 34 was amended by Article 11 of, and Schedule 3 to, the Industrial Relations (Northern Ireland) Order 1982, by Article 6(1) of, and paragraph 5(3) of Schedule 2, paragraph 4(6) of Schedule 3 and Schedule 4 to, the Industrial Relations (Northern Ireland) Order 1987, by Article 5(2) and (3) of the Sex Discrimination (Northern Ireland) Order 1988 and by the Unfair Dismissal (Increase of Limits of Basic and Special Awards) Order (Northern Ireland) 1991 (S.R. 1991 No. 66). Article 35 was amended by Article 11(5) of the Industrial Relations (Northern Ireland) Order 1982, Article 6(2) of, and paragraph 4(6) of Schedule 3 and Schedule 4 to, the Industrial Relations (Northern Ireland) Order 1987 and by the Industrial Relations (Variation of Limits) Order (Northern Ireland) 1991. Article 36(3) was amended by paragraph 4(7) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987. Article 37(1) was amended by the Unfair Dismissal (Increase of Compensation Limit) Order (Northern Ireland) 1991 (S.R. 1991 No. 67). Article 37A was inserted by Article 7(3) of the Industrial Relations (Northern Ireland) Order 1987 and paragraphs (1) and (2) were amended by the Unfair Dismissal (Increase of Limits of Basic and Special Awards) Order (Northern Ireland) 1991. Article 38(2) was amended by paragraph 5(6) of Schedule 4 to the Industrial Relations (No. 2) (Northern Ireland) Order 1976 and by paragraph 33 of Schedule 2 to the Fair Employment (Northern Ireland) Act 1989. Article 38A was substituted by Article 9 of the Industrial Relations (Northern Ireland) Order 1987. Article 39 was amended by Article 10 of, and paragraph 4(8) of Schedule 3 and Schedule 4 to, the Industrial Relations (Northern Ireland) Order 1987.

(**b**) Article 9(4) was amended by paragraph 5 of Schedule 6 to the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)), by Article 4 of the Unfair Dismissal (Variation of Qualifying Period) Order (Northern Ireland) 1985 and by paragraph 5(2) of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1987. Article 13 was amended by paragraph 5(3) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987 and Article 14(6) was repealed by Schedule 3 to the Industrial Relations (Northern Ireland) Order 1982. Article 30 was amended by Schedule 2 to the Industrial Relations (Northern Ireland) Order 1982, Article 30A was inserted by Article 14 of that Order and Article 31 was amended by paragraph 5(3) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987.

have effect in relation to the dismissal as if the Board of Governors or, as the case may be, governing body had dismissed him, and the reason or principal reason for which the Board of Governors or, as the case may be, governing body did so had been the reason or principal reason for which it made its determination.

Trade disputes

5. A dispute—

(*a*) between staff employed to work at a school which has a Board of Governors with a delegated budget and that Board of Governors; or

(*b*) between staff employed to work at an institution of further education which has a governing body with a delegated budget and that governing body,

which relates wholly or mainly to one or more of such matters set out in Article 3(1) of the Industrial Relations (Northern Ireland) Order 1976(**a**) as fall within the employment powers of the Board of Governors or, as the case may be, governing body shall be a trade dispute within the meaning of that Order but, in any case where there is a trade dispute only by virtue of the operation of this Article, nothing in Article 64 of that Order(**b**) shall prevent an act from being actionable in tort where, as the case may be, the inducement, interference or threat mentioned in that Article relates to a contract the performance of which does not affect directly or indirectly the school over which the Board of Governors, or, as the case may be, institution over which the governing body, in question exercises its functions.

Applications to tribunals

6.—(1) Without prejudice to anything in Articles 3 and 4 and notwithstanding any provision in—

(*a*) the Fair Employment (Northern Ireland) Acts(**c**); or

(*b*) any regulations made under section 5 of the Fair Employment (Northern Ireland) Act 1989(**d**); or

(*c*) the Industrial Relations (Northern Ireland) Order 1976; or

(*d*) any regulations made under Article 59(**e**) of the Industrial Relations (Northern Ireland) Order 1976; or

(*e*) the Industrial Relations (No. 2) (Northern Ireland) Order 1976,

---

(**a**) Article 3(1) was amended by Article 20 of, and Schedule 4 to, the Industrial Relations (Northern Ireland) Order 1987.

(**b**) Article 64(2) was repealed by Article 21 of, and Schedule 4 to, the Industrial Relations (Northern Ireland) Order 1987 and Article 64(3) was repealed by Article 19(8) of, and Schedule 3 to, the Industrial Relations (Northern Ireland) Order 1982.

(**c**) 1976 c. 25 and 1989 c. 32.

(**d**) 1989 c. 32.

(**e**) Article 59 was amended by paragraph 6(13) of the Schedule to the Labour Relations Agency (Additional Functions) Order (Northern Ireland) 1977 (S.R. 1977 No. 177), paragraph 5(10) of Schedule 4 to the Industrial Relations (No. 2) (Northern Ireland) Order 1976, Schedule 2 to the Industrial Relations (Northern Ireland) Order 1982, paragraph 9 of Schedule 3 to the Industrial Training (Northern Ireland) Order 1984 (S.I. 1984/1159 (N.I. 9)) and regulation 3(3) of the Equal Pay (Amendment) Regulations (Northern Ireland) 1984 (S.R. 1984 No. 16).

this Article applies in respect of any application to a tribunal and any proceedings pursuant to such an application, in relation to which by virtue of Article 3 or 4 the Board of Governors or, as the case may be, governing body is to be treated as if it were an employer or a principal.

(2) The application shall be made, and the proceedings shall be carried on, against that Board of Governors or, as the case may be, governing body.

(3) Notwithstanding paragraph (2), any decision, declaration, order, recommendation or award made in the course of such proceedings shall have effect as if made against the employing authority.

(4) Where any application is made against a Board of Governors or, as the case may be, governing body pursuant to paragraph (2)—

(*a*) the Board of Governors or, as the case may be, governing body shall notify the employing authority within 14 days of receiving notification thereof; and

(*b*) the employing authority shall, on written application to the tribunal, be entitled to be made an additional party to the proceedings and to take part in the proceedings accordingly.

(5) In this Article—

(*a*) "employing authority" in relation to a controlled school, a Catholic maintained school or a maintained school other than a Catholic maintained school has the meaning assigned to it in paragraph 10(1) of Schedule 4 to the 1989 Order and in relation to an institution of further education means the board for the area in which the institution of further education is situated; and

(*b*) "tribunal" is an industrial tribunal or the Fair Employment Tribunal.

Sealed with the Official Seal of the Department of Education on 26th March 1991.

(L.S.) *J. S. Smith*

Assistant Secretary

Article 3 SCHEDULE

Fair Employment (Northern Ireland) Act 1976(**a**)
Sections 17, 18, 35, 37, 37B and 38.

Sex Discrimination (Northern Ireland) Order 1976(**b**)
Articles 2(2A), 8, 10, 12 and 42.

Industrial Relations (Northern Ireland) Order 1976(**c**)
Articles 20 to 41 (excluding Article 24A(2)(*c*)), 48 to 56 and 59(5) and (6).

Industrial Relations (No. 2) (Northern Ireland) Order 1976(**d**)
Articles 9(4), 13 to 15, 28 to 30, 30A (1) to (3) and (5), 31, 33, 34, 50 to 54, and paragraph 5 of Schedule 2.

Industrial Relations (Northern Ireland) Order 1982(**e**)
Article 4.

(**a**) 1976 c. 25. Section 37 was amended by paragraph 8 of Schedule 2 to the Fair Employment (Northern Ireland) Act 1989 (c. 32). Section 37B was inserted by section 54 of, and section 38 was amended by paragraph 9 of Schedule 2 to, that Act.

(**b**) S.I. 1976/1042 (N.I. 15). Article 2(2A) was inserted by Article 4(1) of the Sex Discrimination (Northern Ireland) Order 1988 (S.I. 1988/1303 (N.I. 13)), and Article 8 was amended by Articles 3(1) and 4(2) of that Order. Article 10 was amended by Article 5(2) of, and Part I of Schedule 5 to, the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990 (S.I. 1990/246 (N.I. 2)).

(**c**) S.I. 1976/1043 (N.I. 16). See amendments listed in footnotes (**d**) on page 3 and (**a**) on page 4. In addition, Articles 49 to 51 were amended by the Industrial Relations (Handling of Redundancies) Variation Order (Northern Ireland) 1979 (S.R. 1979 No. 305). Article 54 and Article 55(4) and (5) were repealed by Schedule 1 to the Redundancy Rebates (Northern Ireland) Order 1986 (S.I. 1986/1886 (N.I. 16)). Article 55(1) was amended by Articles 5(3) and 6(3) and (4) of the Fines and Penalties (Northern Ireland) Order 1984 (S.I. 1984/703 (N.I. 3)). Article 56(1) was amended by paragraph 6(12) of the Schedule to the Labour Relations Agency (Additional Functions) Order (Northern Ireland) 1977 (S.R. 1977 No. 177), Article 56(4A) was inserted by paragraph 5(9) of Schedule 4 to the Industrial Relations (No. 2) (Northern Ireland) Order 1976 (S.I. 1976/2147 (N.I. 28)) and Article 56(5) was repealed by Schedule 6 to that Order.

(**d**) S.I. 1976/2147 (N.I. 28). See amendments listed in footnote (**b**) on page 4. In addition, Article 15 was amended by paragraph 38 of Schedule 7 to the Nurses, Midwives and Health Visitors Act 1979 (c. 36), by Article 13(1) and (2) of, and Schedule 3 to, the Industrial Relations (Northern Ireland) Order 1982 (S.I. 1982/528 (N.I. 8)), and by paragraph 48 of Schedule 9, and Schedule 10, to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)). Article 28(2)(*b*) was amended by paragraph 15 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)). Article 29 was amended by Article 13(3) of the Industrial Relations (Northern Ireland) Order 1982. Article 33 was substituted by Article 11 of the Industrial Relations (Northern Ireland) Order 1987 (S.I. 1987/936 (N.I. 9)). Articles 50, 52, 53 and 54 were amended by paragraph 7 of the Schedule to the Labour Relations Agency (Additional Functions) Order (Northern Ireland) 1977 (S.R. 1977 No. 177).

(**e**) S.I. 1982/528 (N.I. 8).

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order modifies various statutory provisions relating to employment to take account of the requirement, in funding schemes approved under the Education Reform (Northern Ireland) Order 1989, for Education and Library Boards to delegate the financial management of certain schools to their respective Boards of Governors and the financial management of institutions of further education to their respective governing bodies. During the time that such Boards of Governors and governing bodies have the responsibility for the financial management of their school or institution, they also have powers as to the determination of its staff complement, and the suspension, discipline and dismissal of staff at the school or institution, although they are not themselves the employer of those staff.

Article 3 makes general modifications to the statutory provisions set out in the Schedule to the Order by providing that—

(*a*) references to an employer or someone acting as such are treated as including references to the Board of Governors or governing body exercising its employment powers;

(*b*) employment by the employer at the relevant school or institution is treated as employment by the Board of Governors or governing body;

(*c*) references to employees are treated as referring to employees at the relevant school or institution;

(*d*) references to dismissal by an employer are treated as including references to dismissal by the employer on the direction of the Board of Governors or governing body; and

(*e*) references to trade unions recognised by an employer are, as far as the Board of Governors or governing body is concerned, treated as references to trade unions recognised either by the employer or Board of Governors or governing body.

Some provisions of employment law are excluded if an employer employs less than a certain number of staff. Article 3 further provides that the modifications which it makes shall not cause the Board of Governors or governing body to be such a "small employer" if it would not have been so without the modifications.

Article 4 provides that, in a written statement of reasons for an employee's dismissal, the employer's reasons for dismissing an employee shall be the reasons for which a Board of Governors or governing body determined that the employee should cease work at the school or institution of further education. The Article also provides that, where an employee is dismissed by the employer following such a determination, certain statutory provisions relating to employee rights shall have effect as if the Board of Governors or governing body had been the employer and had dismissed the employee for the reason given in the determination.

Article 5 specifies the circumstances in which a dispute between staff at a school or institution of further education and a Board of Governors or governing body shall be a trade dispute within the meaning of the Industrial

Relations (Northern Ireland) Order 1976, and the circumstances in which acts in contemplation or furtherance of such a dispute are not subject to immunity from action in the courts.

Article 6(1) and (2) provides for a Board of Governors or governing body to be the respondent to any application to an industrial tribunal or the Fair Employment Tribunal arising out of any action taken by or on behalf of a Board of Governors or governing body in the exercise of its employment powers or by the employer in pursuance of a determination by a Board of Governors or governing body.

Article 6(3) provides that a decision of a tribunal shall have effect as if made against the employer.

Article 6(4) requires a Board of Governors or a governing body to notify an employer within 14 days of learning of any application to a tribunal against it, and enables the employer to be made an additional party to the proceedings.