

Differences in Employment Law between Great Britain and Northern Ireland

Differences in Northern Ireland legislation compared with Great Britain.

- Unique legislation in Northern Ireland
- Duplicate Orders in Council
- Different infrastructure
- Different court system
- Industrial Tribunals (IT) as opposed to Employment Tribunals (ET) in GB
- Appeal from IT by way of Court of Appeal in NI in GB appeal from and ET to an Employment Appeal Tribunal (EAT) and then the Court of Appeal.

Differing types of Legislation affecting Northern Ireland

- 1972 onwards Orders in Council
- 1921 – 1972 Acts of Northern Ireland Parliament
- Acts of the Westminster Parliament applying to the UK including Northern Ireland
- Acts of the Westminster Parliament applying only to Northern Ireland
- EU Regulations and Directives

Legislative effects pertaining in Northern Ireland 1970s

The Quigley Report

The effect of Direct Rule on legislative matters (*See the History of the Courts ante*)

The Industrial Relations Orders

1980s

The effect of the Industrial Relations (NI) Order 1982

The Parity Agreement

1990s

The Trade Union and Labour Relations (NI) Order 1995

What is an 'Employee'? - Employment Rights (NI) Order 1996

Article 3 (1) 'Employee' means an individual who has entered into or works undera contract of employment

(2) 'contract of employment' means a contract of service or apprenticeship

Excepted/special categories

- Office holders
- Police officers – employee rights under the Employment Rights (NI) Order 1996 do not apply to those in the police service – i.e. police officers, including harbour police. It does not include airport police or prison officers.
- Crown servants
- Clergy

Quasi Autonomous Non-Government Organisation operating in Northern Ireland (QUANGO's)

Labour Relations Agency (LRA in GB ACAS) formed in 1976. Its purpose to promote '*good industrial relations*'

Human Rights Commission established under the NI Act 1998 in March 1999

Health and Safety Executive comprises former Health and Safety Agency and Health and Safety Inspectorate. Its aim is to promote '*health , safety and welfare at work*'.

Equality Commission (EC) one 'super' agency established October 1999 (*brainchild of the late Dr Mo Marjorie Mowlam former Sec of State for NI*). Formerly in NI there were separate equality commissions for Fair Employment (*perceived religious belief or political opinion*), Sex Discrimination and discrimination on the grounds of disability. GB (The Equal Opportunities Commission) The EC in Northern Ireland embraces the following:-

- Racial Equality
- Equal Opportunities
- Fair Employment
- Disability Discrimination

Major employment legislation

Equal Pay Act (NI) 1970 as amended

Employment Rights (NI) Order 1996

Employment Relations (NI) Order 1999

Employment (NI) Order 2002

Employment (NI) Orders 2003

Employment Relations (NI) Order 2004

Health and Safety at Work (NI) Order 1978

Trade Union & Labour Relations (NI) Order 1995

The Occupational Pensions Schemes (Equal Treatment) (Amendment) Regs (NI) 2005

Age Discrimination Regulations expected Autumn 2006

Data Protection Act 1998

Freedom of Information Act 2000

Four types of Discrimination

Direct Discrimination

Treating a person less favourably than others are or would be treated in the same or similar circumstances

Indirect Discrimination

Occurs where an apparently neutral provision, criterion or practice has the effect of disadvantaging a considerably larger proportion of the members of one sex

Victimisation

Of a person because he/she has brought or given evidence in proceedings under the Order, the Equal Pay Act or provisions of the Pensions (NI) Order 1995

Harassment

Unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. The harassment has to lead to some detriment. '*Detriment*' is not defined in the Sex Discrimination (NI) Order 1976 but the House of Lords in the celebrated Northern Ireland case *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 made it clear that the detriment does not have to be a financial one, while having to be more than '*an unjustified sense of grievance*'. See also Equal treatment (Amendment) Directive (2002/73).

Anti Discrimination Legislation

Fair Employment (NI) Act 1976
Fair Employment (NI) Act 1989
Fair Employment & Treatment (NI) Order 1998 (as amended)
Sex Discrimination (NI) Orders 1976 1988 & 1999
Equal Pay (Amendment) Regulations (NI) 1984
Disability Discrimination Act 1995
Race Relations (NI) Order 1997
Rehabilitation of Offenders (NI) Order 1978

Categories presently covered by anti-discrimination legislation

Females and sexual orientation

Equal Pay Act (NI) 1970 (as amended)
Sex Discrimination (NI) Order 1976 (as amended) 1988 & 1999
Employment Equality (Sex Discrimination) Regulations (NI) 2005
Sex Discrimination (Gender Reassignment) Regulations (NI) 1999
Employment Equality (Sexual Orientation) Regulations (NI) 2003

Ethnic minorities

Race Relations Act 1976 NI Order (1997) (as amended)

Religious belief or political opinion

Fair Employment (NI) Acts 1976 & 1989
Fair Employment & Treatment (NI) Order 1998 (as amended)

Disability

Disability Discrimination Act 1995
Equality (Disability etc) (NI) Order 2000

Ex-Offenders.

The perceived primary function of rehabilitation law is:

"...to restore the offender to a position in society, not less favourable than that of one who has not offended" (1972 Gardiner Report)

Justice (NI) Act 2002

Rehabilitation of Offenders (NI) Order 1978

Rehabilitation of Offenders (Exceptions) Order (NI) 1979 (as amended) 2001

Health and safety at work

In Northern Ireland the Health and Safety Executive (NI) are the regulators. The base legislation is the Health and Safety at Work (NI) Order 1978 from which the following regulations flow:

The Management of Health & Safety at Work Regulations (NI) 1992

The Manual Handling Operations Regulations (NI) 1992

The Health and Safety (Display Screen Equipment) Regulations (NI) 1992

The Workplace (Health, Safety and Welfare) Regulations (NI) 1993

The Provision and Use of Work Equipment Regulations (NI) 1993

The Personal Protective Equipment at Work Regulations (NI) 1993

Industrial Relations (NI) Order 1976 1992 & 1999

Northern Ireland Act 1998 Ss 75 & 76

Equal Pay Act (NI) 1970 (as amended)

The Act provides for equal pay between women and men in the same employment by giving the woman the right to equality in the terms of her contract of employment when she is employed

On like-work to that of a man S1 (2) (a) and (4)

On work rated as equivalent to that of a man S1 (2)(b)& (5)

On work of equal value to that of a man in terms of demands made under effort, skill and decision making S1 (2) (c)

Disability Discrimination Act 1995 Equality (Disability etc) (NI) Order 2000

Under S 1 of the Disability Discrimination Act disabled people are '*people with physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day to day activities*'

The Order applies to all aspects of employment including:-

- Recruitment
- Training
- Promotion
- Dismissal

Race Relations (NI) Order 1997

Article 5 defines "racial groups" as '*a group of persons defined by reference to colour, race, nationality or ethnic or national origins*'.

The Order makes it unlawful to discriminate either directly or indirectly in the areas of:

- Employment
- Training
- Housing
- Education
- Or the provision of goods facilities and services

Fair Employment (NI) Acts 1976 & 1989 (FEA) and 1999 & 2003 Orders

Fair Employment (NI) Act 1976 enabling legislation

Established the Fair Employment Agency (FEA) with advisory, research, investigative and enforcement functions and made discrimination on the grounds of religion and political opinion unlawful.

Fair Employment Acts Northern Ireland

Fair Employment (NI) Act 1989

Established the Fair Employment Commission in place of the FEA

Established the Fair Employment Tribunal (FET) to hear cases brought under the legislation

Outlawed indirect discrimination on the grounds of religion or political opinion

Fair Employment and Treatment (NI) Order 1998

Extended the scope of Fair Employment legislation by making it unlawful to discriminate on the grounds of religious belief or political opinion and the absence of any, or any particular, religious belief or political opinion in the :-

- Provision of goods
- Services
- Facilities
- Sale or letting of land or premises

Rehabilitation of Offenders (NI) Order 1978 & Exceptions (NI) Order 1979 (as amended)

Allows certain persons who have not been subsequently reconvicted to be considered as rehabilitated persons and their convictions treated as 'spent'

If a person is given a sentence or more than 2 ½ years then that conviction can never be 'spent'

A 'spent' conviction cannot normally be used as a reason for refusing to employ someone, or dismissing him/her from employment

Some occupations and professions are held to be 'excepted' from the provisions of the Order – teachers, social workers, child minders, the medical professions, lawyers and accountants etc.

Industrial Tribunals (IT) and Fair Employment Tribunals (FET) in Northern Ireland

Industrial Tribunals have been in operation in Northern Ireland since 1964. Their main jurisdiction was to hear disputes relating to industrial training levy and redundancy claims. With the advent of the Equal Pay Act (NI) 1970 the Sex Discrimination (NI) Order 1976 the Industrial Relations (NI) Order 1976 ("the No 1 Order") and the Industrial Relations (No 2) (NI) Order 1976 ("the No 2 Order") the business and jurisdiction of the Industrial Tribunals rocketed. The law continued to develop at an alarming rate in this regard. The Industrial Relations (NI) Orders 1982 and 1987 and the Wages (NI) Order 1988 made amendments to the substantive law and added considerably to the jurisdiction of the Tribunals. The Equal Pay Act (NI) 1970 was amended to introduce new provisions relating to 'equal value'. The Transfer of Undertakings (Protection of Employment) Regulations 1981 also added a new dimension to the work of the Tribunals. The Tribunals were established for the 'common man' to provide "an easily accessible speedy, informal and inexpensive

procedure for the settlement of disputes”.¹ Today the Industrial Tribunals are independent judicial bodies that hear and determine claims to do with employment matters. These include a range of claims relating to unfair dismissal, breach of contract, wages and other payments as well as discrimination on the grounds of sex, race, disability, sexual orientation and equal pay.

In Great Britain employment tribunals deal with cases arising from, for example, race, sex or disability discrimination, unfair dismissal and breach of contract. In Northern Ireland such matters are handled by industrial tribunals (IT). Alongside the industrial tribunals is Northern Ireland's unique Fair Employment Tribunal (FET) which has jurisdiction over cases arising from claims of employment discrimination of a political or religious nature. The Industrial Tribunals were originally designed to enable a non-lawyer whether as a party or as a representative, to appear in front of them and to play a full part in their proceedings. The day to day business of the Tribunals is published on the website under the auspices of the Northern Ireland Court Service. It is not unknown for ‘Silks’ to appear on a regular basis. There is no legal aid available for any Tribunal. If one does not have financial support from one of the Commissions their legal fees could amount to thousands of pounds. Very few self litigants appear before the Industrial or Fair Employment Tribunals today.

The main sources of labour law in Northern Ireland are legislation. This supplement can only scratch at the surface. In keeping with the rest of the UK the Province finds itself with an increasing legislative intervention in the field of industrial relations. National legislation is an important source of labour law in NI such legislation is often prompted by the need to give effect to standards embodied in international instruments to which the UK is a party. European influences abound in the legislation with a proliferation of Regulations and Directives affecting daily life in myriad ways. A decision from the Tribunals may well be challenged. This can be done in a number of ways. There is a right of appeal on a point of law from the decision of an Industrial Tribunal to the Northern Ireland Court of Appeal and from there to the House of Lords.

The Fair Employment (NI) Act 1989 established the **The Fair Employment Tribunal** is an independent judicial body that hears and determines complaints of discrimination on the grounds of religious belief and/or political opinion.

The Labour Relations Agency (LRA) was established in 1976 as a Non-Departmental Public Body with responsibility for promoting the improvement of employment relations in Northern Ireland. The Agency is independent of Government and is funded mainly in the form of a grant from the Department for Employment and Learning (DEL). The LRA provides an impartial and confidential employment relations service to those engaged in industry, commerce and the public services. The Agency's services include the provision of advice on good employment practices and assistance with the development and implementation of employment policies and procedures. It is also active in resolving disputes through its conciliation, mediation and arbitration services. Its equivalent in GB is ACAS.

¹ Report of ‘The Royal Commission on Trade Unions and Employers’ Associations 1968

USEFUL SITES:

<http://www.delni.gov.uk/index.cfm/area/information/page/drmemo>
<http://northernireland-legislation.hmso.gov.uk/si/si2003/03em2902.htm>
www.ofmdfmni.gov.uk/sex-discrimination-draft-regulations.pdf
<http://www.opsi.gov.uk/acts/acts2004/20040033.htm>
www.ofmdfmni.gov.uk/index/equality/age
<http://www.opsi.gov.uk/sr/sr2005/20050377.htm>
<http://www.opsi.gov.uk/sr/sr2005/20050345/htm>
[http://www.ofmdfmni.gov.uk/civil_partnership_leaflet\[1\].PDF](http://www.ofmdfmni.gov.uk/civil_partnership_leaflet[1].PDF)