

Industrial Court for Northern Ireland,
Room 203,
Adelaide House,
39-49 Adelaide Street
Belfast
BT2 2FD

20 April 2007

Ms Julie Gillespie
Legislation Progress Unit
Room A4.0 1
Castle Buildings
Stormont Estate
BELFAST BT4 3SR

Dear Ms Gillespie,

**Re: Proposal for a Draft Order in Council: The Public Authorities Reform
(Northern Ireland) Order 2007**

On behalf of the Industrial Court, I am attaching the Court's this consultation.

Yours sincerely,

Barry Fitzpatrick
Acting Chairman

Consultation on Draft Primary Legislation

Proposal for a Draft Order in Council: The Public Authorities Reform (Northern Ireland) Order 2007

Response of the Industrial Court for Northern Ireland

1 Introduction

The Industrial Court notes proposed amendments to the Industrial Relations (Northern Ireland) Order 1992 in relation to appointments to the Court and the functioning of the Court. The Court is responding only in relation to these proposals.

It is proposed that the existing paragraphs (1) to (7) of Article 91A of the 1992 Order (as introduced in Article 25 of the Employment Relations (Northern Ireland) Order 1999) should be substituted by a regulation making power on the part of the Department. A minor amendment to paragraph 170A(9) of Schedule 1A of the Trade Union and Labour Relations (Northern Ireland) Order 1995 is also proposed.

2 Substitution of paragraphs in Article 91A

The Court is concerned that existing provisions on appointments and functions of the Court are being substituted by a regulation making power without transitional arrangements during the time between the substitution of these provisions by way of Article 91A(1) and the enactment of the Regulations required by what will be Article 91A(2). It is envisaged that draft Regulations will be produced, subject to consultation with the Court and interested stakeholders. This transitional period will therefore last for a number of months.

Unless the commencement of the proposed Article 91A(1) is delayed until the Regulations come into force, there will be a lacuna whereby there will be no statutory provisions on appointments to the Court and aspects of its functions at present covered by Article 91A(1)-(7). As presently drafted, it would appear that the substitution will take place at the same time as the creation of the regulation-making power.

It is therefore proposed that paragraph 4 (1) of Schedule 3 of the Draft Order be redrafted to create the regulation-making power upon the enactment of the Order/Act but to delay the removal of the existing provisions in paragraphs 1 to 7 of Article 91A until such time as the proposed Regulations come into force.

3 Policy considerations

3.1 Introduction

The Court has no particular objection to provisions of appointment and functions of the Court being in secondary legislation, namely Regulations, as opposed to primary legislation, namely an Order in Council or Assembly Act.

Hence, so long as the substitution of the existing Article 91A (1)-(7) coincides with the coming into force of Regulations governing these matters, the Court considers that important policy considerations should be thoroughly debated and consulted upon at the time of the preparation of the draft Regulations. An impression may be given by the Consultation Document that proposals on these policy considerations are being determined at this time. This is not the Court's understanding of what is proposed. Rather the Court is of the view that proposed Regulations may include, for example, consultations with relevant parties etc and therefore that the eventual substitution of the existing Article 91A(4) would not preclude parallel provisions in the Regulations.

The Court would therefore wish to consider these matters further when proposals for Regulations are produced. Nonetheless, the Court has preliminary views on these matters and these will be briefly outlined.

3.2 Distinction between appointment of chairman/deputy chairman and members of the Court

At present Article 91A does not make a distinction between appointment of the chairman/deputy chairman and that of members and between the industrial relations experience of the chairman/deputy chairman and that of members. Subject to whatever content the Regulations may contain, the Court in general approves separate regulations being made for the appointment of the chairman/deputy chairman and for the appointment of members and the criteria required.

It might therefore be possible to still require some experience of industrial relations on the part of the chairman and any deputy chairman but might also require a degree of legal qualification for these positions. On the other hand, the Court is of the view that all members should have experience of industrial relations. It is accepted that there are aspects of information and consultation where knowledge of corporate management might be an advantage. However the bulk of the Court's work in Northern Ireland will be on matters of industrial relations under statutory recognition or the great majority of issues under the Information and Consultation Regulations.

A distinction between the appointment of the chairman/deputy chairman also leaves open the possibility of different methods of appointment. For example, it could be envisaged that the chairman (and any deputy) could be appointed by public advertisement. Members of the Court are strongly of the view that members of the Court should have the confidence of stakeholders and that the social partners are best placed to judge the industrial relations expertise of the Court's members.

Although these remarks have been made in the context of consultation, which will be discussed below, there is concern within the Court at a move to publicly advertised appointments in relation to members of the Court. It is accepted that membership of the Central Arbitration Committee has been by way of publicly advertised appointments. However CAC members enjoy a regular flow of work which is not the case in the Industrial Court. In light of this, and also uncertainty over issues surrounding appointments to the Court, there is no guarantee that the calibre of membership which the Court has enjoyed until now would be maintained if public-advertised appointments were introduced.

The Court's preliminary view on these matters is that the appointment of the chairman and deputy should be by way of public advertisement but that appointment of members of the Court should be by nomination of the social partners.

3.3 Consultation with stakeholders

In this context, there is resistance within the Court to the removal of consultation requirements with 'other persons' as referred to in Article 91A(4) and understood to be the social partners in Northern Ireland. If a distinction is made between the method of appointment of the chairman (or deputy), it may not be appropriate to consult the social partners on these appointments but it is felt that consultation should be maintained on the appointment of members.

3.4 Terms of appointment (and removal and suspension)

Members of the Court are aware that their terms of appointment at present fall short of the degree of security enjoyed by the chairman, deputy chairmen and members of the CAC. **The Court therefore welcomes the opportunity which consultation on draft Regulations will provide to discuss these matters further.**

4 Secretariat of the Court

The Court notes a proposal to remove reference to the provision of a Case Manager by the Department in relation to a particular provision of Schedule 1A of the 1995 Order. There is no reference to the provision of the Secretariat in Articles 91, 91A, 92 or 92A of the 1992 Order. There is some disquiet in the Court that this proposal might call into question the provision of the Secretariat. However given that the 1992 Order is silent on these matters, there does not appear to be any particular need for this reference in paragraph 170A(9) of the Schedule.

However, given that members of the Secretariat, in particular case managers, do perform statutory functions within the remit of the Court, it would be helpful if the proposed Article 91A provided for the making of regulations on the provision of the Secretariat.

5 Conclusion

The Court welcomes proposals to allow for the making of regulations on matters of the appointment and functioning of the Court. It considers that the

draft Order as presently drafted allows a lacuna between the substitution of the existing Article 91A of the 1992 Order and the coming into force of proposed Regulations.

The Court looks forward to further discussion at the time of consultation on draft Regulations in relation to policy considerations on method of appointments, consultation on appointments and terms of appointment (and removal and suspension). It has set out some of its preliminary views on these matters in this response.

The Court has no objection to the removal of specific reference to the Department in relation to provision of a case manager as at present set out in paragraph 170A(9) of Schedule 1A of the 1995 Order.

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