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STATUTORY RULES OF NORTHERN IRELAND

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**2004 No. 165**

**EMPLOYMENT**

**Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004**

*Made* - - - - *2nd April 2004*  
*Coming into operation* *4th April 2004*

The Department for Employment and Learning<sup>(1)</sup>, in exercise of the powers conferred on it by Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978<sup>(2)</sup>, section 62(2) of and paragraph 42(1) of Schedule 8 to the Disability Discrimination Act 1995<sup>(3)</sup>, Articles 3(1), 6(6)<sup>(4)</sup> and (6A)<sup>(5)</sup>, 9(1), (2), (3) and (5), 11(1), (2) and (4), 12(2), (5), (6) and (7), 12A(1)<sup>(6)</sup>, 13(1), 14(2), 15(1) and (2), 21 and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996<sup>(7)</sup>, and now vested in it<sup>(8)</sup>, and of every other power enabling it in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004 and the Rules of Procedure contained in Schedules 1, 2, 3, 4, 5 and 6 may be referred to, respectively, as –

- (a) the Industrial Tribunals Rules of Procedure 2004;
- (b) the Industrial Tribunals (National Security) Complementary Rules of Procedure 2004;
- (c) the Industrial Tribunals (Equal Value) Complementary Rules of Procedure 2004;
- (d) the Industrial Tribunals (Levy Appeals) Rules of Procedure 2004;
- (e) the Industrial Tribunals (Improvement and Prohibition Notices Appeals) Rules of Procedure 2004; and
- (f) the Industrial Tribunals (Non-Discrimination Notices Appeals) Rules of Procedure 2004.

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(1) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)  
(2) S.I. 1978/1039 (N.I. 9)  
(3) 1995 c. 50  
(4) Article 6(6) was amended by paragraph 16(3) of Schedule 1 to the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8))  
(5) Article 6A was inserted by Article 4(5) of S.I. 1998/1265 (N.I. 8)  
(6) Article 12 was substituted and Article 12A inserted by paragraph 3 of Schedule 8 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9))  
(7) S.I. 1996/1921 (N.I. 18)  
(8) *See* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999

(2) These Regulations shall come into operation on 4th April 2004.

## Interpretation

2.—(1) In these Regulations –

“the Act of 1995” means the Disability Discrimination Act 1995<sup>(9)</sup>;

“the Order of 1976” means the Sex Discrimination (Northern Ireland) Order 1976<sup>(10)</sup>;

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996<sup>(11)</sup>;

“the Industrial Tribunals Order” means the Industrial Tribunals (Northern Ireland) Order 1996<sup>(12)</sup>;

“the Order of 1997” means the Race Relations (Northern Ireland) Order 1997<sup>(13)</sup>;

“the Regulations of 2003” means the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003<sup>(14)</sup>;

“chairman” means the President, the Vice-President or a member of the panel of chairmen selected in accordance with regulation 8(1); or, for the purposes of proceedings in relation to which a direction is given under Article 12(3) of the Industrial Tribunals Order or an order is made under Article 12(4) of that Order, a member of the panel referred to in regulation 6(a) selected in accordance with regulation 8(5)(a);

“the clerk” means the person appointed as clerk to the tribunal by the Secretary to act in that capacity at one or more hearings;

“devolution issue” means a devolution issue within the meaning of paragraph 1 of Schedule 10 to the Northern Ireland Act 1998<sup>(15)</sup>;

“document exchange” means any document exchange for the time being approved by the Lord Chancellor;

“hearing” means a sitting of a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the tribunal to reach a decision on any question;

“the Office of the Tribunals” means the Office of the Industrial Tribunals and the Fair Employment Tribunal;

“panel of chairmen” means the panel appointed in accordance with regulation 5(1)(a);

“the President” means the President of the Industrial Tribunals and the Fair Employment Tribunal or the person nominated by the Lord Chancellor under Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998<sup>(16)</sup> to discharge the functions of the President;

“Register” means the Register of applications, appeals and decisions kept in pursuance of regulation 11;

“the relevant authorities” means the persons mentioned in paragraph 5 of Schedule 10 to the Northern Ireland Act 1998;

“rule” means a rule of procedure contained in the Schedules;

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(9) 1995 c. 50

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

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

(12) S.I. 1996/1921 (N.I. 18)

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

(14) S.R. 2003 No. 497

(15) 1998 c. 47

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

“the Secretary” means the person for the time being appointed to act as the Secretary of the Office of the Tribunals;

“tribunal” means an industrial tribunal;

“the Vice-President” means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal or the person nominated by the Lord Chancellor under Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998 to discharge the functions of the Vice-President.

(2) In these Regulations, in so far as they relate to the rules in Schedules 1, 2 and 3, and in those Schedules –

“the Act of 1970” means the Equal Pay Act (Northern Ireland) 1970(**17**);

“the Order of 1988” means the Sex Discrimination (Northern Ireland) Order 1988(**18**);

“the Order of 1992” means the Industrial Relations (Northern Ireland) Order 1992(**19**);

“Crown employment proceedings” has the meaning given by Article 12(8) of the Industrial Tribunals Order;

“decision” in relation to a tribunal includes –

- (a) a declaration;
- (b) an order, including an order striking out any originating application or notice of appearance made under rule 4(8)(b) or 15(2);
- (c) a recommendation or an award of the tribunal; and
- (d) a determination under rule 6;

but does not include any other interlocutory order or any other decision on an interlocutory matter;

“equal value claim” means a claim by an applicant which rests upon entitlement to the benefit of an equality clause by virtue of the operation of section 1(2)(c) of the Act of 1970(**20**);

“excluded person” means, in relation to any proceedings, a person who has been excluded from all or part of the proceedings by virtue of –

- (a) a direction of a Minister of the Crown under rule 8(1)(b) or (c), or
- (b) an order of the tribunal under rule 8(2)(a) read with rule 8(1)(b) or (c);

“expert” means a member of the panel of independent experts within the meaning of section 2A(4) of the Act of 1970(**21**);

“misconceived” includes having no reasonable prospect of success;

“report” means a report required by a tribunal to be prepared by an expert, pursuant to section 2A(1)(b) of the Act of 1970;

“respondent” means a party to the proceedings before a tribunal other than the applicant;

“special advocate” means a person appointed pursuant to rule 7A(1).

(3) In these Regulations, in so far as they relate to the rules in Schedule 4, and in that Schedule –

“the Order of 1984” means the Industrial Training (Northern Ireland) Order 1984(**22**);

“appellant” means a person who sends a notice of appeal to the Board;

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(17) 1970 c. 32 (N.I.) as amended by S.R. 1984 No. 16

(18) S.I. 1988/1303 (N.I. 13)

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

(20) Section 1(2)(c) was inserted by S.R. 1984 No. 16

(21) Section 2A was inserted by S.R. 1984 No. 16

(22) S.I. 1984/1159 (N.I. 9)

“the Board” means, in relation to an appeal, the Construction Industry Training Board(23);

“decision” includes any order which is not an interlocutory order;

“levy” means a levy imposed under the Order of 1984(24).

(4) In these Regulations, in so far as they relate to the rules in Schedule 5, and in that Schedule –

“the Order of 1978” means the Health and Safety at Work (Northern Ireland) Order 1978(25);

“decision” in relation to a tribunal includes a direction under rule 4(1) and any order which is not an interlocutory order;

“improvement notice” means a notice under Article 23 of the Order of 1978;

“inspector” means a person appointed under Article 21(1) of the Order of 1978;

“prohibition notice” means a notice under Article 24 of the Order of 1978;

“respondent” means the inspector who issued the improvement notice or prohibition notice which is the subject of the appeal.

(5) In these Regulations, in so far as they relate to the rules in Schedule 6, and in that Schedule –

“the Order of 2000” means the Equality (Disability, etc.) (Northern Ireland) Order 2000(26);

“decision” in relation to a tribunal includes a direction under Article 68(3) of the Order of 1976, under Article 56(3) of the Order of 1997 or under paragraph 10(4) of Schedule 1 to the Order of 2000, as the case may be, and any other order which is not an interlocutory order;

“non-discrimination notice” means a notice under Article 67 of the Order of 1976, Article 56 of the Order of 1997 or paragraph 10 of Schedule 1 to the Order of 2000;

“respondent” means the Equality Commission established under section 73 of the Northern Ireland Act 1998(27).

(6) Any period of time for doing any act required or permitted to be done under any of the rules in Schedules 1, 2, 3, 4, 5 and 6 or under any decision, direction, declaration, order, recommendation, award or determination of a tribunal or a chairman, shall be calculated in accordance with paragraphs (7) to (10).

(7) Where any act must or may be done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. For example, a respondent receives a copy of an originating application on 1st October. He must present a written notice of appearance to the Secretary within 21 days of receiving the copy. The last day for presentation of the notice is 22nd October.

(8) Where any act must or may be done not less than a certain number of days before or after an event, the date of that event shall not be included in the calculation. For example, if a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the originating application, he must submit them not less than 7 days before the hearing. If the hearing is fixed for 8th October, the representations must be submitted no later than 1st October.

(9) Where the tribunal or a chairman gives any decision, direction, declaration, order, recommendation, award or determination which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(10) In rule 5(2) of Schedule 1, rule 8 of Schedule 4, rule 6(1) of Schedule 5 and rule 4(1) of Schedule 6, the requirement to send the notice of hearing to the parties not less than 14 days before the date fixed for the hearing shall not be construed as a requirement for service of the notice to have

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(23) See S.R. & O. (N.I.) 1964 No. 145

(24) Article 23 makes provision for levy proposals and orders

(25) S.I. 1978/1039 (N.I. 9)

(26) S.I. 2000/1110 (N.I. 2)

(27) 1998 c. 47

been effected not less than 14 days before the hearing date, but as a requirement for the notice to have been placed in the post not less than 14 days before that date. For example, a hearing is fixed for 15th October. The last day on which the notice may be placed in the post is 1st October.

### **Establishment of industrial tribunals**

3.—(1) There shall continue to be tribunals established for the purposes of exercising the jurisdiction conferred on them by or under the Order of 1984 or any other statutory provision.

(2) The President or the Vice-President shall determine at what time and in what place the tribunals shall sit.

### **President and Vice-President of industrial tribunals**

4.—(1) There shall be a President and a Vice-President of the Industrial Tribunals and the Fair Employment Tribunal who shall each be appointed by the Lord Chancellor and shall be persons –

- (a) having a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(28);
- (b) being an advocate or solicitor admitted in Scotland of at least 7 years' standing; or
- (c) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing.

(2) The President or the Vice-President may each resign his office by notice in writing to the Lord Chancellor.

(3) The President and the Vice-President shall each vacate his office at the end of the completed year of service in the course of which he attains the age of 72 years.

(4) If the Lord Chancellor is satisfied that the President or the Vice-President is incapacitated by infirmity of mind or body from discharging the duties of his office, or the President or the Vice-President is adjudged to be bankrupt or makes a composition or arrangement with his creditors, the Lord Chancellor may revoke his appointment.

(5) The functions of President and Vice-President under these Regulations may, if either is for any reason unable to act or during any vacancy in his office, be discharged by a person nominated for that purpose by the Lord Chancellor.

### **Panels of chairmen and members of industrial tribunals**

5.—(1) There shall be a panel of chairmen and two panels of members of the industrial tribunals, namely –

- (a) a panel of persons to act as chairmen appointed by the Department consisting of persons –
  - (i) having a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (ii) being an advocate or solicitor admitted in Scotland of at least 7 years' standing; or
  - (iii) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing;
- (b) a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employees as it sees fit; and
- (c) a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employers as it sees fit.

(2) Members of the panels constituted under these Regulations shall hold and vacate office under the terms of the instrument under which they are appointed but may resign their office by notice in writing to the Department, and any such member who ceases to hold office shall be eligible for reappointment.

#### **Further panels in national security cases**

6. For the purposes of proceedings in relation to which a direction is given under Article 12(3) of the Industrial Tribunals Order, or an order is made under Article 12(4) of that Order, the President shall –

- (a) select a panel of persons from the panel of chairmen to act as chairmen in such cases, and
- (b) select –
  - (i) a panel of persons from the panel referred to in regulation 5(1)(b) as persons suitable to act as members in such cases; and
  - (ii) a panel of persons from the panel referred to in regulation 5(1)(c) as persons suitable to act as members in such cases.

#### **Modification of Article 6 of the Industrial Tribunals Order**

7.—(1) For the purposes of proceedings in relation to which a direction is given under Article 12(3), or an order is made under Article 12(4) of the Industrial Tribunals Order, Article 6 of that Order shall be modified as provided by paragraphs (2) to (4).

(2) In Article 6(1)(a), for the words “in accordance with regulations made under Article 3(1)” substitute the words “in accordance with regulations 6(a) and 8(5) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004”.

(3) In Article 6(1)(b), for the words “in accordance with regulations so made” substitute the words “in accordance with regulations 6(b) and 8(5) of those Regulations”.

(4) In Article 6(5), for the words “in accordance with regulations made under Article 3(1)” substitute the words “in accordance with regulation 6(a) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004”.

#### **Composition of tribunals**

8.—(1) For each hearing of any matter before a tribunal the President or the Vice-President shall select a chairman, who shall, subject to paragraph (5), be the President, the Vice-President or a member of the panel of chairmen, and the President or the Vice-President may select himself.

(2) In any proceedings which are to be determined by a tribunal comprising a chairman (selected in accordance with paragraph (1) or (5), as the case may be) and two other members, those other members shall, subject to paragraph (5), be selected by the President or by the Vice-President, as to one member from the panel of persons appointed by the Department under regulation 5(1)(b) and as to the other from the panel of persons appointed under regulation 5(1)(c).

(3) In any proceedings which are to be determined by a tribunal whose composition is described in paragraph (2), or, as the case may be, paragraph (5)(b), those proceedings may, with the consent of the parties, be heard and determined in the absence of any one member other than the chairman, and in that event the tribunal shall be properly constituted.

(4) The President or the Vice-President may at any time select from the appropriate panel another person in substitution for the chairman or other member of the tribunal previously selected to hear any proceedings before a tribunal.

(5) For the purposes of proceedings in relation to which a direction is given under Article 12(3) of the Industrial Tribunals Order, or an order is made under Article 12(4) of that Order –

- (a) the President or the Vice-President shall select a chairman, who shall be the President, the Vice-President or a member of the panel selected in accordance with regulation 6(a), and the President or the Vice-President may select himself; and
- (b) in any such proceedings which are to be determined by a tribunal comprising a chairman (selected in accordance with sub-paragraph (a)) and two other members, those other members shall be selected by the President or the Vice-President, as to –
  - (i) one member from the panel selected in accordance with regulation 6(b)(i); and
  - (ii) the other from the panel selected in accordance with regulation 6(b)(ii).

### **Overriding objective**

9.—(1) The overriding objective of the rules in Schedules 1, 2, 3, 4, 5 and 6 is to enable tribunals to deal with cases justly.

- (2) Dealing with a case justly includes, so far as practicable –
  - (a) ensuring that the parties are on an equal footing;
  - (b) saving expense;
  - (c) dealing with the case in ways which are proportionate to the complexity of the issues; and
  - (d) ensuring that it is dealt with expeditiously and fairly.
- (3) A tribunal shall seek to give effect to the overriding objective when it –
  - (a) exercises any power given to it by the rules in Schedules 1, 2, 3, 4, 5 and 6; or
  - (b) interprets any rule in Schedules 1, 2, 3, 4, 5 and 6.
- (4) The parties shall assist the tribunal to further the overriding objective.

### **Proceedings of tribunals**

10.—(1) Subject to paragraphs (2) to (6), the rules in Schedule 1 shall apply in relation to all proceedings before a tribunal except where separate rules of procedure made under any statutory provision are applicable.

(2) In proceedings to which the rules in Schedule 1 apply and in which any power conferred on a Minister of the Crown or the tribunal by rule 8(1), (2) or (3) of Schedule 1 is exercised –

- (a) rules 3, 4, 7, 10, 11, 12 and 13 of Schedule 1 shall be modified in accordance with Schedule 2; and
- (b) rules 7A (special advocate) and 7B (reasons for the tribunal’s decision in national security cases), as referred to in paragraph 4 of Schedule 2, shall be inserted into Schedule 1.

(3) In proceedings to which the rules in Schedule 1 apply and which involve an equal value claim –

- (a) rules 4, 11, 12, 14 and 15 of Schedule 1 shall be modified in accordance with Part I of Schedule 3; and
- (b) rule 10A (procedure relating to expert’s report), as referred to in paragraph 2 of Part I of Schedule 3, shall be inserted into Schedule 1.

(4) In proceedings to which the rules in Schedule 1 apply, and in which the rules in Schedule 1 are required to be modified in accordance with both paragraphs (2) and (3) the insertion or, as the case may be, substitution, of rules 4(9), 7B, 11(2) and 12(5A) to (5D) in Schedule 1 shall be in accordance with Part II of Schedule 3.

(5) The rules contained in Schedules 1, 2 and 3 shall apply in proceedings to which they relate where –

- (a) the respondent or one of the respondents resides or carries on business in Northern Ireland;
  - (b) had the remedy been by way of action in the county court, the cause of action would have arisen wholly or partly in Northern Ireland; or
  - (c) the proceedings are to determine a question which has been referred to the tribunal by a court in Northern Ireland.
- (6) The rules in Schedules 4, 5 and 6 shall apply in relation to proceedings before a tribunal which relate to matters arising in Northern Ireland and consist, respectively, in –
- (a) an appeal by a person assessed to levy imposed under a levy order made under Article 23 of the Order of 1984;
  - (b) an appeal against an improvement or prohibition notice under Article 26 of the Order of 1978(29); and
  - (c) an appeal against a non-discrimination notice under Article 68 of the Order of 1976, Article 56 of the Order of 1997 or paragraph 10 of Schedule 1 to the Order of 2000.

### **Register**

**11.**—(1) The Secretary shall maintain a Register at the Office of the Tribunals which shall be open to the inspection of any person without charge at all reasonable hours.

- (2) The Register shall contain –
  - (a) details of originating applications in accordance with rule 2 of Schedule 1;
  - (b) details of appeals in accordance with rule 5 of Schedule 4, rule 3 of Schedule 5 and rule 2 of Schedule 6;
  - (c) the fact of applications in accordance with rule 4 of Schedule 5; and
  - (d) documents recording the decisions of tribunals and the reasons therefor.
- (3) The register, or any part of it, may be kept by means of a computer.

### **Proof of decisions of tribunals**

**12.** The production in any proceedings in any court of a document purporting to be certified by the Secretary to be a true copy of an entry of a decision in the Register shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

### **Transitional provision**

**13.** These Regulations shall apply in relation to all proceedings to which they relate, irrespective of when those proceedings were commenced.

### **Revocations**

- 14.** The Regulations listed in Schedule 7 are hereby revoked.

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(29) Modifications were made by [S.R. 2000 No. 87](#), which under specific circumstances extended the meaning of “employee” and “at work” for the purposes of Regulations made under Part II of the Order of 1978. Further modifications were made by [S.R. 2000 No. 120](#), which extended the definitions of “work” and “at work” for the purposes of Part II of the Order. Article 24 was also amended, in part, by the Consumer Protection (Northern Ireland) Order 1987 ([S.I. 1987/2049 \(N.I. 20\)](#))



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Sealed with the Official Seal of the Department for Employment and Learning on 2nd April 2004.

L.S.

*R. B. Gamble*  
A senior officer of the  
Department for Employment and Learning

SCHEDULE 1

Regulations 2(2), (6) and (10), 9, 10(1),  
and 11(2)

INDUSTRIAL TRIBUNALS RULES OF PROCEDURE

**Originating application**

1.—(1) Where proceedings are brought by an applicant, they shall be instituted by the applicant presenting to the Secretary an originating application, which shall be in writing and shall set out –

- (a) the name and address of the applicant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the proceedings to be sent;
- (b) the names and addresses of the person or persons against whom relief is sought; and
- (c) the grounds, with particulars thereof, on which relief is sought.

(2) Two or more originating applications may be presented in a single document by applicants who claim relief in respect of or arising out of the same set of facts.

(3) Where the Secretary is of the opinion that the originating application does not seek or on the facts stated therein cannot entitle the applicant to a relief which a tribunal has power to give, he may give notice to that effect to the applicant stating the reasons for his opinion and informing him that the application will not be registered unless he states in writing that he wishes to proceed with it.

(4) An application in respect of which such a notice has been given shall not be treated as having been received for the purpose of rule 2 unless the applicant intimates in writing to the Secretary that he wishes to proceed with it; and upon receipt of such an intimation the Secretary shall proceed in accordance with that rule.

(5) In the case of an originating application in respect of a complaint under Article 77A(4A) of the Order 1976(30), Article 68B(1) of the Order of 1997(31), or paragraph 5 of Schedule 4 to the Regulations of 2003 relating to a term of a collective agreement, the following persons, whether or not identified in the originating application, shall be regarded as the persons against whom relief is sought and shall be treated as respondents for the purposes of these Rules, that is to say –

- (a) the applicant's employer (or prospective employer); and
- (b) every organisation of employers and organisation of workers, and every association of or representative of such organisations, which, if the term were to be varied voluntarily, would be likely, in the opinion of the tribunal, to negotiate the variation,

provided that such an organisation or association shall not be treated as a respondent if the tribunal, having made such enquiries of the applicant and such other enquiries as it thinks fit, is of the opinion that it is not reasonably practicable to identify the organisation or association.

(6) Where proceedings are referred to a tribunal by a court, these Rules shall be applied to them, except where the rules are inappropriate, as if the proceedings had been instituted by the presentation of an originating application.

(7) Paragraph (1)(b) does not apply to an originating application in respect of an application under Article 5C of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981(32) for the variation or revocation of a prohibition order, but on any such application the Department shall be treated as the respondent for the purpose of these Rules.

(30) Article 77A(4A) was inserted by S.I. 1993/2668 (N.I. 11), Article 11

(31) Article 68B(1) was inserted by S.R. 2003 No. 341

(32) S.I. 1981/839 (N.I. 20). Article 5C was inserted by 1994 c. 40 section 35 and Schedule 10 paragraph 2(2)

### **Action upon receipt of originating application**

- 2.—(1) Upon receiving an originating application the Secretary shall –
- (a) send a copy of it to the respondent;
  - (b) give every party notice in writing of the case number of the application (which shall constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent; and
  - (c) send to the respondent a notice in writing which includes information, as appropriate to the case, about the means and time for entering an appearance, the consequences of failure to do so, and the right to receive a copy of the decision.
- (2) The Secretary shall enter such of the details of an originating application as are referred to in paragraph (4) in the Register either within 28 days of receiving it or, if that is not practicable, as soon as reasonably practicable thereafter.
- (3) The Secretary shall also, in all cases, notify the parties that in every case where a statutory provision provides for conciliation, the services of a conciliation officer of the Labour Relations Agency are available to them.
- (4) The details of an originating application to be entered in the Register are –
- (a) the case number;
  - (b) the date the Secretary received the application;
  - (c) the name and address of the applicant;
  - (d) the name and address of the respondent;
  - (e) the place where the application was presented; and
  - (f) the type of claim brought in general terms without reference to its particulars.
- (5) In any case appearing to the Secretary to involve allegations of the commission of a sexual offence, where any person referred to in paragraph (4)(c) or (4)(d) appears to the Secretary to be a person affected by or making the allegations he shall omit from the Register the details in paragraph (4)(c) or (4)(d), as the case may be, relating to that person.

### **Appearance by respondent**

- 3.—(1) A respondent shall, within 21 days of receiving the copy of the originating application, enter an appearance to the proceedings by presenting to the Secretary a written notice of appearance –
- (a) setting out his full name and address and, if different, an address within the United Kingdom to which he requires notices and documents relating to the proceedings to be sent;
  - (b) stating whether or not he intends to resist the application; and
  - (c) if he does intend to resist it, setting out sufficient particulars to show on what grounds.
- (2) Upon receipt of a notice of appearance the Secretary shall send a copy of it to each other party.
- (3) Two or more notices of appearance relating to originating applications in which the relief claimed is in respect of or arises out of the same set of facts may be presented in a single document, provided that in respect of each of the originating applications to which the notices so presented relate –
- (a) the respondent intends to resist the applications and the grounds for doing so are the same in each case; or
  - (b) the respondent does not intend to resist the applications.

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(4) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except –

- (a) to apply under rule 17 for an extension of the time appointed by this rule for entering an appearance;
- (b) to make an application under rule 4(1);
- (c) to make an application under rule 13(4) in respect of rule 13(1)(b);
- (d) to be called as a witness by another person;
- (e) to be sent a copy of a document or corrected entry in pursuance of rule 12(5), (9) or (10);

and in the rules which follow, the word “party” only includes such a respondent in relation to his entitlement to take such a part in the proceedings, and in relation to any such part which he takes.

### **Case management**

4.—(1) A tribunal may at any time, on the application of a party or of its own motion, give such directions on any matter arising in connection with the proceedings as appear to the tribunal to be appropriate.

(2) An application under paragraph (1) –

- (a) may be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and set out the grounds of the application; or
- (b) may be made at the hearing of the originating application.

(3) Directions under paragraph (1) may include any requirement relating to evidence (including the provision and exchange of witness statements), the provision of further particulars, and the provision of written answers to questions put to a party by the tribunal.

(4) A tribunal may appoint the time at or within which and the place at which any act required in pursuance of this rule is to be done and may direct that a copy of any document furnished pursuant to any requirement imposed under this rule be sent to the tribunal.

(5) A tribunal may, on the application of a party or of its own motion –

- (a) require the attendance of any person in Northern Ireland, including a party, either to give evidence or to produce documents or both; or
- (b) require one party to grant to another such discovery or inspection (including the taking of copies) of documents as might be granted by a county court,

and may appoint the time at or within which or place at which any act in pursuance of this rule is to be done.

(6) Every document containing a requirement imposed under paragraph (5) shall state that, under Article 9(4) of the Industrial Tribunals Order, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall also state the amount of the current maximum fine.

(7) Where a requirement has been imposed under paragraph (1) or (5) –

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.

(8) If a requirement under paragraph (1) or (5) is not complied with, the tribunal –

- (a) may make an order in respect of costs under rule 14(1)(a); or
- (b) before or at the hearing, may strike out the whole or part of the originating application, or, as the case may be, the notice of appearance, and, where appropriate, direct that a respondent be debarred from defending altogether,

but a tribunal shall not exercise its powers under this paragraph unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so, or the party has been given an opportunity to show cause orally why the powers conferred by this paragraph should not be exercised.

### **Time and place of hearing**

5.—(1) The President or the Vice-President shall fix the date, time and place of the hearing of the originating application and the Secretary shall send to each party a notice of hearing together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents, representation by another person and the making of written representations.

(2) The Secretary shall send the notice of hearing to every party not less than 14 days before the date fixed for the hearing except –

- (a) where the Secretary has agreed a shorter time with the parties; or
- (b) on an application for interim relief made under Article 163 of the Employment Rights Order.

### **Entitlement to bring or contest proceedings**

6.—(1) A tribunal may at any time before the hearing of an originating application, on the application of a party made by notice to the Secretary or of its own motion, hear and determine any issue relating to the entitlement of any party to bring or contest the proceedings to which the originating application relates.

(2) A tribunal shall not determine such an issue unless the Secretary has sent notice to each of the parties giving them an opportunity to submit representations in writing and to advance oral argument before the tribunal.

### **Pre-hearing review**

7.—(1) A tribunal may at any time before the hearing of an originating application, on the application of a party made by notice to the Secretary or of its own motion, conduct a pre-hearing review, consisting of a consideration of –

- (a) the contents of the originating application and notice of appearance;
- (b) any representations in writing; and
- (c) any oral argument advanced by or on behalf of a party.

(2) If a party applies for a pre-hearing review and the tribunal determines that there shall be no review, the Secretary shall send notice of the determination to that party.

(3) A pre-hearing review shall not take place unless the Secretary has sent notice to the parties giving them an opportunity to submit representations in writing and to advance oral argument at the review if they so wish.

(4) If upon a pre-hearing review the tribunal considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have no reasonable prospect of success, the tribunal may make an order against that party requiring the party to pay a deposit of an amount not exceeding £500 as a condition of being permitted to continue to participate in the proceedings relating to that matter.

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(5) No order shall be made under this rule unless the tribunal has taken reasonable steps to ascertain the ability of the party against whom it is proposed to make the order to comply with such an order, and has taken account of any information so ascertained in determining the amount of the deposit.

(6) An order made under this rule, and the tribunal's reasons for considering that the contentions in question have no reasonable prospect of success, shall be recorded in summary form in a document signed by the chairman. A copy of that document shall be sent to each party and shall be accompanied by a note explaining that if the party against whom the order is made persists in participating in proceedings relating to the matter to which the order relates, he may have an award of costs made against him and could lose his deposit.

(7) If a party against whom an order has been made does not pay the amount specified in the order to the Secretary either –

- (a) within the period of 21 days of the day on which the document recording the making of the order is sent to him; or
- (b) within such further period, not exceeding 14 days, as the tribunal may allow in the light of representations made by that party within the said period of 21 days,

the tribunal shall strike out the originating application or notice of appearance of that party or, as the case may be, the part of it to which the order relates.

(8) The deposit paid by a party under an order made under this rule shall be refunded to him in full except where rule 14(8) applies.

(9) No member of a tribunal which has conducted a pre-hearing review shall be a member of the tribunal at the hearing of the originating application.

### **National security**

8.—(1) A Minister of the Crown (whether or not he is a party to the proceedings) may, if he considers it expedient in the interests of national security, direct a tribunal by notice to the Secretary to –

- (a) sit in private for all or part of particular Crown employment proceedings;
- (b) exclude the applicant from all or part of particular Crown employment proceedings;
- (c) exclude the applicant's representatives from all or part of particular Crown employment proceedings;
- (d) take steps to conceal the identity of a particular witness in particular Crown employment proceedings.

(2) A tribunal may, if it considers it expedient in the interests of national security, by order –

- (a) do anything of a kind which a tribunal can be required to do by direction under paragraph (1);
- (b) direct any person to whom any document (including any decision or record of the proceedings) has been provided for the purposes of the proceedings not to disclose any such document or the content thereof to –
  - (i) any excluded person;
  - (ii) in any case in which a direction has been given under paragraph (1)(a) or an order has been made under paragraph (2)(a) read with paragraph (1)(a), to any person excluded from all or part of the proceedings by virtue of such direction or order; or
  - (iii) in any case in which a Minister of the Crown has informed the Secretary in accordance with paragraph (3) that he wishes to address the tribunal with a view to the tribunal making an order under paragraph (2)(a) read with paragraph (1)(b) or

(c), to any person who may be excluded from all or part of the proceedings by virtue of such an order, if an order is made, at any time before the tribunal decides whether or not to make such an order;

(c) take steps to keep secret all or part of the reasons for its decision.

(3) The tribunal shall keep under review any order it makes under this rule.

(4) In any proceedings in which a Minister of the Crown considers that it would be appropriate for a tribunal to make an order as referred to in paragraph (2), he shall (whether or not he is a party to the proceedings) be entitled to appear before and to address the tribunal thereon. The Minister shall inform the Secretary by notice that he wishes to address the tribunal and the Secretary shall copy the notice to the parties.

(5) When exercising its functions, a tribunal shall ensure that information is not disclosed contrary to the interests of national security.

### **Dismissals in connection with industrial action**

9.—(1) In relation to a complaint under Article 145 of the Employment Rights Order (unfair dismissal: complaint to industrial tribunal) that a dismissal is unfair by virtue of Article 144A of the Employment Rights Order<sup>(33)</sup> (participation in official industrial action) a tribunal may adjourn the proceedings where specified civil proceedings have been brought until such time as interlocutory proceedings arising out of the specified civil proceedings have been concluded.

(2) In this rule –

“specified civil proceedings” means legal proceedings brought by any person against another person in which it is to be determined whether an act of that other person, which induced the applicant to commit an act, or each of a series of acts, is by virtue of Article 97 of the Trade Union and Labour Relations (Northern Ireland) Order 1995<sup>(34)</sup> not actionable in tort; and

the interlocutory proceedings shall not be regarded as having concluded until all rights of appeal have been exhausted or the time for instituting any appeal in the course of the interlocutory proceedings has expired.

### **The hearing**

10.—(1) Any hearing of an originating application shall be heard by a tribunal composed in accordance with Article 6(1), (2) and (3) of the Industrial Tribunals Order<sup>(35)</sup>.

(2) Any hearing of or in connection with an originating application shall take place in public.

(3) Notwithstanding paragraph (2), a tribunal may sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of –

- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision;
- (b) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Order of 1992, cause substantial injury to any undertaking of his or any undertaking in which he works.

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<sup>(33)</sup> Article 144A was inserted by paragraph 6 of Schedule 5 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9))

<sup>(34)</sup> S.I. 1995/1980 (N.I. 12)

<sup>(35)</sup> Article 6(1) was amended by sub-paragraph 16(2) of Schedule 1 to the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8))

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(4) If a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the originating application he shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy to each other party.

(5) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Secretary less than 7 days before the hearing.

(6) The Department if it so elects shall be entitled to appear as if it were a party and be heard at any hearing of or in connection with an originating application in proceedings which may involve a payment out of the Northern Ireland National Insurance Fund, and in that event it shall be treated for the purposes of these Rules as if it were a party.

### **Procedure at hearing**

11.—(1) The tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall not be bound by any statutory provision or rule of law relating to the admissibility of evidence in proceedings before the courts of law. The tribunal shall make such enquiries of persons appearing before it and witnesses as it considers appropriate and shall otherwise conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Subject to paragraph (1), at the hearing of the originating application a party shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(3) If a party fails to attend or to be represented at the time and place fixed for the hearing, the tribunal may, if that party is an applicant, dismiss or, in any case, dispose of the application in the absence of that party or may adjourn the hearing to a later date; provided that before dismissing or disposing of any application in the absence of a party the tribunal shall consider his originating application or notice of appearance, any representations in writing presented by him pursuant to rule 10(4) or (5) and any written answer furnished to the tribunal pursuant to rule 4(3).

(4) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

### **Decision of tribunal**

12.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal, which may be given orally at the end of a hearing or reserved, shall be recorded in a document signed by the chairman.

(3) The tribunal shall give reasons for its decision in a document signed by the chairman. That document shall contain a statement as to whether the reasons are given in summary or extended form and where the tribunal –

- (a) makes an award of compensation; or
- (b) comes to any other determination by virtue of which one party is required to pay a sum to another (excluding an award of costs or allowances),

the document shall also contain a statement of the amount of compensation awarded, or of the sum required to be paid, followed either by a table showing how the amount or sum has been calculated or by a description of the manner in which it has been calculated.

(4) The reasons for the decision of the tribunal shall be given in summary form except where –

- (a) the proceedings involved the determination of an issue arising under or relating to the Act of 1970, the Order of 1976, the Order of 1988, the Act of 1995, the Order of 1997, or the Regulations of 2003;



- (b) a request that the reasons be given in extended form is made orally at the hearing by a party;
- (c) such a request is made in writing by a party after the hearing either –
  - (i) before any document recording the reasons in summary form is sent to the parties; or
  - (ii) within 21 days of the date on which that document was sent to the parties; or
- (d) the tribunal considers that reasons given in summary form would not sufficiently explain the grounds for its decision,

and in those circumstances the reasons shall be given in extended form.

(5) The clerk shall transmit the documents referred to in paragraphs (2) and (3) to the Secretary who shall enter them in the Register and shall send a copy of the entry to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court.

(6) The document referred to in paragraph (3) shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs. In such a case the Secretary shall send that document to each of the parties; and where there are proceedings before a superior court relating to the decision in question, he shall send the document to that court, together with a copy of the entry in the Register of the document referred to in paragraph (2).

(7) In any case appearing to involve allegations of a sexual offence, the document referred to in paragraph (3) shall be entered on the Register with such deletions or amendments as have been made in accordance with rule 15(6).

(8) Clerical mistakes in the documents referred to in paragraphs (2) and (3) or errors arising in those documents from an accidental slip or omission, may at any time be corrected by the chairman by certificate.

- (9) If a document is corrected by certificate under paragraph (8), or if a decision is –
  - (a) revoked or varied under rule 13; or
  - (b) altered in any way by order of a superior court,

the Secretary shall alter any entry in the Register which is affected to conform with the certificate or order and send a copy of any entry so altered to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court.

(10) Where a document omitted from the Register pursuant to paragraph (6) is corrected by certificate under paragraph (8), the Secretary shall send a copy of the corrected document to the parties; and where there are proceedings before any superior court relating to the decision in question, he shall send a copy to that court together with a copy of the entry in the Register of the document referred to in paragraph (2), if it has been altered under paragraph (9).

(11) Where this rule requires a document to be signed by the chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other members or member of the tribunal, who shall certify that the chairman is unable to sign.

### **Review of tribunal's decision**

13.—(1) Subject to the provisions of this rule, a tribunal shall have power, on the application of a party or of its own motion, to review any decision on the grounds that –

- (a) the decision was wrongly made as a result of an error on the part of the staff of the Office of the Tribunals;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;

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- (d) new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at the time of the hearing; or
  - (e) the interests of justice require such a review.
- (2) A tribunal may not review a decision of its own motion unless it is the tribunal which issued the decision.
- (3) A tribunal may only review a decision of its own motion if –
- (a) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review; and
  - (b) such notice has been sent on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties.
- (4) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.
- (5) An application for the purposes of paragraph (1) may be refused by the President, the Vice-President or by the chairman of the tribunal which decided the case if in his opinion it has no reasonable prospect of success and he shall state the reasons for his opinion.
- (6) If such an application is not refused under paragraph (5) it shall be heard by the tribunal which decided the case, or –
- (a) where it is not practicable for it to be heard by that tribunal; or
  - (b) where the decision was made by a chairman acting alone under rule 15(8),
- by a tribunal appointed by either the President or the Vice-President.
- (7) On reviewing its decision a tribunal may confirm the decision, or vary or revoke the decision; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

## **Costs**

- 14.—(1) Where, in the opinion of the tribunal, a party has in bringing the proceedings, or a party or a party's representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or a party's actions in bringing the proceedings have been misconceived, the tribunal shall consider making, and if it so decides, may make –
- (a) an order containing an award against that party in respect of the costs incurred by another party;
  - (b) an order that that party shall pay to the Department the whole, or any part, of any allowances (other than allowances paid to members of tribunals) paid by the Department under Article 7(2) and (3) of the Industrial Tribunals Order to any person for the purposes of, or in connection with, his attendance at the tribunal.
- (2) Paragraph (1) applies to a respondent who has not entered an appearance in relation to the conduct of any part in the proceedings which he has taken.
- (3) An order containing an award against a party (“the first party”) in respect of the costs incurred by another party (“the second party”) shall be –
- (a) where the tribunal thinks fit, an order that the first party pay to the second party a specified sum not exceeding £10,000;

- (b) where those parties agree on a sum to be paid by the first party to the second party in respect of those costs, an order that the first party pay to the second party a specified sum, being the sum so agreed; or
- (c) in any other case, an order that the first party pay to the second party the whole or a specified part of the costs incurred by the second party as assessed by way of detailed assessment (if not otherwise agreed).

(4) Where the tribunal has on the application of a party postponed the day or time fixed for or adjourned the hearing, the tribunal may make an order, of the kinds mentioned in paragraphs (1)(a) and (1)(b), against or, as the case may require, in favour of that party as respects any costs incurred or any allowances paid as a result of the postponement or adjournment.

(5) A tribunal shall make orders against a respondent of the kinds mentioned in paragraphs (1)(a) and (1)(b) as respects any costs or any allowances paid as a result of the postponement or adjournment of a hearing where, on a complaint of unfair dismissal, the applicant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing of the complaint and the postponement or adjournment has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the applicant was dismissed, or of comparable or suitable employment.

(6) Any costs required by an order under this rule to be assessed by way of detailed assessment may be so assessed in the county court in accordance with such of the scales prescribed by county court rules for proceedings in the county court as shall be directed by the order.

(7) Where –

- (a) a party has been ordered under rule 7 to pay a deposit as a condition of being permitted to continue to participate in proceedings relating to a matter;
- (b) in respect of that matter, the tribunal has found against that party in its decision; and
- (c) there has been no award of costs made against that party arising out of the proceedings on the matter,

the tribunal shall consider whether to award costs against that party on the ground that he conducted the proceedings relating to the matter unreasonably in persisting in having the matter determined by a tribunal; but the tribunal shall not make an award of costs on that ground unless it has considered the document recording the order under rule 7 and is of the opinion that the reasons which caused the tribunal to find against the party in its decision were substantially the same as the reasons recorded in that document for considering that the contentions of the party had no reasonable prospect of success.

(8) Where an award of costs is made against a party who has had an order under rule 7 made against him (whether the award arises out of the proceedings relating to the matter in respect of which the order was made or out of proceedings relating to any other matter considered with that matter), his deposit shall be paid in part or full settlement of the award –

- (a) where an award is made in favour of one party, to that party; and
- (b) where awards are made in favour of more than one party, to all of them or any one or more of them as the tribunal thinks fit, and if to all or more than one, in such proportions as the tribunal considers appropriate,

and if the amount of the deposit exceeds the amount of the award of costs, the balance shall be refunded to the party who paid it.

### **Miscellaneous powers**

- 15.—(1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure.
- (2) A tribunal may –

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- (a) if the applicant at any time gives notice of the withdrawal of his originating application, dismiss the proceedings;
- (b) if both or all the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;
- (c) subject to paragraph (3), at any stage of the proceedings, order to be struck out or amended any originating application or notice of appearance, or anything in such application or notice of appearance, on the grounds that it is misconceived, vexatious, abusive or otherwise unreasonable;
- (d) subject to paragraph (3), at any stage of the proceedings, order to be struck out any originating application or notice of appearance on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or, as the case may be, respondent has been vexatious, abusive, disruptive or otherwise unreasonable; and
- (e) subject to paragraph (3), on the application of the respondent, or of its own motion, order an originating application to be struck out for want of prosecution.

(3) Before making an order under sub-paragraph (c), (d) or (e) of paragraph (2) the tribunal shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made; but this paragraph shall not be taken to require the tribunal to send such notice to that party if the party has been given an opportunity to show cause orally why the order should not be made.

(4) Where a notice required by paragraph (3) is sent in relation to an order to strike out an originating application for want of prosecution, service of the notice shall be treated as having been effected if it has been sent by post or delivered in accordance with rule 22(3) and the tribunal may strike out the originating application (notwithstanding that there has been no direction for substituted service in accordance with rule 22(6)) if the party does not avail himself of the opportunity given by the notice.

(5) A tribunal may, before determining an application under rule 4 or rule 19, require the party making the application to give notice of it to every other party. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified for the purposes of the application by the tribunal.

(6) In any case appearing to involve the allegations of the commission of a sexual offence, the tribunal or the Secretary shall omit from the Register, or delete from the Register or any decision, document or record of the proceedings, which is available to the public, any identifying matter which is likely to lead members of the public to identify any person affected by or making such an allegation.

(7) A chairman may postpone the day or time fixed for, or adjourn, any hearing (particularly where a statutory provision provides for conciliation in relation to the case, for the purpose of giving an opportunity for the case to be settled by way of conciliation and withdrawn) and vary any such postponement or adjournment.

(8) Any act required or authorised by these Rules to be done by a tribunal may be done by the President, the Vice-President or by a chairman except –

- (a) the hearing of an originating application under rule 10;
- (b) an act required or authorised to be so done by rule 11 or 12 which the rule implies is to be done by the tribunal which is hearing or has heard the originating application; or
- (c) the review of a decision under rule 13(1), and the confirmation, variation or revocation of a decision, and ordering of a re-hearing, under rule 13(7).

(9) Any act required or authorised by rule 17 and paragraph (7) to be done by a chairman may be done by a tribunal or on the direction of the President, the Vice-President or a chairman.

(10) Any function of the Secretary may be performed by a person acting with the authority of the Secretary.

### **Restricted reporting orders**

16.—(1) In any case which involves allegations of sexual misconduct the tribunal may at any time before promulgation of its decision in respect of an originating application, either on the application of a party made by notice to the Secretary or of its own motion, make a restricted reporting order.

(2) In proceedings on a complaint under section 8 of the Act of 1995 in which evidence of a personal nature is likely to be heard by the tribunal, it may at any time before promulgation of its decision in respect of an originating application, either on the application of the complainant made by notice to the Secretary or of its own motion make a restricted reporting order.

(3) Where the tribunal makes a restricted reporting order under paragraph (2) and that complaint is being dealt with together with any other proceedings, the tribunal may direct that the order applies also in relation to those other proceedings or such part of them as the tribunal may direct.

(4) The tribunal shall not make a restricted reporting order unless it has given each party an opportunity to advance oral argument at a hearing, if they so wish.

(5) Where a tribunal makes a restricted reporting order –

- (a) it shall specify in the order the persons who may not be identified;
- (b) the order shall remain in force until the promulgation of the decision of the tribunal on the originating application to which it relates unless revoked earlier; and
- (c) the Secretary shall ensure that a notice of that fact is displayed on the notice board of the tribunal with any list of the proceedings taking place before the tribunal, and on the door of the room in which the proceedings affected by the order are taking place.

(6) A tribunal may revoke a restricted reporting order at any time if it thinks fit.

(7) For the purposes of this rule “promulgation” occurs on the date recorded as being the date on which the document recording the determination of the originating application was sent to the parties.

### **Extension of time**

17.—(1) A chairman may, on the application of a party or of his own motion, extend the time for doing any act appointed by or under these Rules (including this rule) and may do so whether or not the time so appointed has expired.

(2) An application under paragraph (1) shall be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(3) The Secretary shall give notice to each of the parties of any extension of time granted under this rule.

### **Devolution issues**

18.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time –

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send each of the relevant authorities a copy of the originating application and the notice of appearance.

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(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

### **Joinder and representative respondents**

19.—(1) A tribunal may at any time, on the application of any person made by notice to the Secretary or of its own motion, direct any person against whom any relief is sought to be joined as a party, and give such consequential directions as it considers necessary.

(2) A tribunal may likewise, on such application or of its own motion, order that any respondent named in the originating application or subsequently added, who appears to the tribunal not to have been, or to have ceased to be, directly interested in the subject of the originating application, be dismissed from the proceedings.

(3) Where there are a number of persons having the same interest in an originating application, one or more of them may be cited as the person or persons against whom relief is sought, or may be authorised by the tribunal, before or at the hearing, to defend on behalf of all the persons so interested.

### **Combined proceedings**

20.—(1) Where in relation to two or more originating applications pending before the industrial tribunals, it appears to an industrial tribunal, on the application of a party made by notice to the Secretary or of its own motion, that –

- (a) a common question of law or fact arises in some or all the originating applications;
- (b) the relief claimed in some or all of those originating applications is in respect of or arises out of the same set of facts; or
- (c) for any other reason it is desirable to make an order under this rule,

the tribunal may order that some (as specified in the order) or all of the originating applications in respect of which it so appears to the tribunal shall be considered together, and may give such consequential directions as may be necessary.

(2) The tribunal shall only make an order under this rule if –

- (a) each of the parties concerned has been given an opportunity at a hearing to show cause why such an order should not be made; or
- (b) it has sent notice to all the parties concerned giving them an opportunity to show such cause.

(3) The tribunal may, on the application of a party made by notice to the Secretary or of its own motion, vary or set aside an order made under this rule but shall not do so unless it has given each party an opportunity to make either oral or written representations before the order is varied or set aside.

### **References to the European Court of Justice**

21. Where a tribunal makes an order referring a question to the European Court of Justice for a preliminary ruling under Article 234 of the Treaty establishing the European Community, the Secretary shall send a copy of the order to the Registrar of that Court but shall not do so until the time for appealing against the order has expired or, if an appeal is made within that time, until the appeal has been determined or otherwise disposed of.

### **Notices, etc.**

22.—(1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent through a document exchange in accordance with paragraph (5), or by ordinary post (subject to paragraph (6)) or delivered to or at –

- (a) in the case of a notice or document directed to the Department in proceedings to which it is not a party (or in respect of which it is treated as a party for the purposes of these Rules by virtue of rule 10(6)), the offices of the Department for Employment and Learning at Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD, or such other office as may be notified by the Department;
- (b) in the case of a notice or document directed to the Attorney General for Northern Ireland pursuant to rule 18, the Attorney General’s Chambers, 9 Buckingham Gate, London SW1E 7JP;
- (c) in the case of a notice or document directed to a court, the office of the clerk of the court;
- (d) in the case of a notice or document directed to a party –
  - (i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, or in a notice under paragraph (4); or
  - (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom or, if the party is a corporate body, the body’s registered or principal office in the United Kingdom, or, in any case, such address or place outside the United Kingdom as the President or the Vice-President may allow;
- (e) in the case of a notice or document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the United Kingdom or, if the person is a corporate body, the body’s registered or principal office in the United Kingdom,

and a notice or document sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party may at any time by notice to the Secretary and to the other party or parties (and, where appropriate, to the appropriate conciliation officer) change the address to which notices and documents are to be sent.

(5) Where –

- (a) the proper address for service of any notice or document required or authorised by these Rules to be sent or given to any person includes a numbered box at a document exchange; or
- (b) there is inscribed on the writing paper of the party on whom the notice or document is to be served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the notice or document that he is unwilling to accept service through a document exchange,

service of the notice or document may be effected by leaving it addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any notice or document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(6) In any case he considers appropriate, the President or the Vice-President may direct that there shall be substituted service in such manner as he may deem fit.

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(7) In proceedings brought under any statutory provision providing for conciliation the Secretary shall send copies of all documents and notices to a conciliation officer who in the opinion of the Secretary is an appropriate officer to receive them.

(8) Paragraph (7) does not apply in relation to documents or notices falling within a description of documents or notices in respect of which the Secretary and the Labour Relations Agency have agreed that copies need not be sent.

(9) In proceedings which may involve a payment out of the Northern Ireland National Insurance Fund, the Secretary shall, where appropriate, send copies of all documents and notices to the Department whether or not it is a party.

(10) Copies of every document and copy entry sent to the parties under rule 12(5) and (9) shall in the case of proceedings under the Act of 1970, the Order of 1976, the Order of 1988, the Act of 1995, the Order of 1997 or the Regulations of 2003 be sent to the Equality Commission.

## SCHEDULE 2

Regulations 2(3) and (6), 9, 10(2) and  
11(2)

### INDUSTRIAL TRIBUNALS (NATIONAL SECURITY) COMPLEMENTARY RULES OF PROCEDURE

*For use only in cases in which a power conferred on a Minister of the Crown or the tribunal by rule 8(1), (2) or (3) of Schedule 1 is exercised*

#### **Modification of rule 3 of Schedule 1**

1. In rule 3 of Schedule 1 (appearance by respondent), insert the following paragraphs after paragraph (1) –

“(1A) Paragraph (1)(c) shall not apply in any case in which –

- (a) a direction of a Minister of the Crown under rule 8(1)(b) (exclusion of applicant) applicable to this stage of the proceedings is given; or
- (b) a Minister of the Crown has informed the Secretary in accordance with rule 8(4) that he wishes to address the tribunal with a view to the tribunal making an order applicable to this stage of the proceedings under rule 8(2)(a) read with 8(1)(b),

before the expiry of the period for entering the appearance.

(1B) Where paragraph (1A) applies –

- (a) in a case falling within sub-paragraph (b) of paragraph (1A) and in which the tribunal decides not to make an order under rule 8(2)(a) read with 8(1)(b), the respondent shall within 21 days of the tribunal so deciding provide to the Secretary in writing sufficient particulars to show on what grounds he intends to resist the application. Upon receipt thereof the Secretary shall send a copy to each other party;
- (b) in a case falling within sub-paragraph (b) of paragraph (1A) and in which the tribunal makes an order under rule 8(2)(a) read with 8(1)(b), or in a case falling within sub-paragraph (a) of paragraph (1A), the respondent shall, within 42 days of the making of the order or the giving of the direction, as the case may be, provide to the tribunal and, where applicable, to the special advocate in writing, sufficient particulars to show on what grounds he intends to resist the application.

(1C) In any case not falling within paragraph (1A) but in which a direction of a Minister of the Crown under rule 8(1)(c) (exclusion of applicant’s representative) applicable to this



stage of the proceedings is given, or an order of the tribunal under rule 8(2)(a) read with 8(1)(c) applicable to this stage of the proceedings is made, the Secretary shall not send a copy of the notice of appearance to any person excluded from all or part of the proceedings by virtue of such direction or order.

(1D) In any case not falling within paragraph (1A) or (1C) but in which a Minister of the Crown has informed the Secretary in accordance with rule 8(4) that he wishes to address the tribunal with a view to the tribunal making an order applicable to this stage of the proceedings under rule 8(2)(a), read with 8(1)(c), the Secretary shall not send a copy of the notice of appearance to any person who may be excluded from all or part of the proceedings by virtue of such an order, if an order is made, at any time before the tribunal decides whether or not to make such an order.”

#### **Modification of rule 4 of Schedule 1**

2. At the end of rule 4 of Schedule 1 (case management), insert the following paragraph –

“(9) Where –

- (a) a Minister has at any stage issued a direction under rule 8(1)(b) or (c) (exclusion of applicant or his representative), or the tribunal has at any stage made an order under rule 8(2)(a) read with 8(1)(b) or (c); and
- (b) the tribunal (whether on application of a party or of its own motion) is considering whether to impose, or has imposed, a requirement under paragraph (1) or (5) on any person,

a Minister of the Crown (whether or not he is a party to the proceedings) may make an application to the tribunal objecting to the imposition of a requirement under paragraph (1) or (5), or, where a requirement has been imposed, an application to vary or set aside the requirement, as the case may be. The tribunal shall hear and determine the Minister’s application in private and the Minister shall be entitled to address the tribunal thereon. The application shall be made by notice to the Secretary and the Secretary shall give notice of the application to each party.”

#### **Modification of rule 7 of Schedule 1**

3. For paragraph (3) of rule 7 of Schedule 1 (pre-hearing review), substitute –

“(3) A pre-hearing review shall not take place unless the Secretary has sent notice to the parties giving them an opportunity to submit representations in writing and, except in the case of a pre-hearing review in which a special advocate has been appointed in respect of the applicant, to advance oral argument at the review if they so wish. Where a special advocate has been appointed in respect of the applicant, oral argument may be advanced on behalf of the applicant at the review by the special advocate.”

#### **Insertion of rules 7A and 7B into Schedule 1**

4. After rule 7 of Schedule 1, insert –

##### **“Special advocate**

7A.—(1) In any proceedings in which there is an excluded person the tribunal shall inform the Attorney General for Northern Ireland of the proceedings before it with a view to the Attorney General for Northern Ireland, if he thinks it fit to do so, appointing a special advocate to represent the interests of the applicant in respect of those parts of the proceedings from which –

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- (a) any representative of his is excluded;
- (b) both he and his representative are excluded; or
- (c) he is excluded, where he does not have a representative.

(2) A special advocate shall have a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990(36).

(3) Where the excluded person is the applicant, he shall be permitted to make a statement to the tribunal before the commencement of the proceedings, or the part of the proceedings, from which he is excluded.

(4) Except in accordance with paragraphs (5) to (7), the special advocate may not communicate directly or indirectly with any person (including an excluded person) –

- (a) (except in the case of the tribunal and the respondent) on any matter contained in the particulars referred to in rule 3(1B)(b); or
- (b) (except in the case of a person who was present) on any matter discussed or referred to during any part of the proceedings in which the tribunal sat in private pursuant to a direction of the Minister of the Crown under rule 8(1)(a) or an order of the tribunal under rule 8(2)(a) read with 8(1)(a).

(5) The special advocate may apply for directions from the tribunal authorising him to seek instructions from, or otherwise to communicate with, an excluded person –

- (a) on any matter contained in the particulars referred to in rule 3(1B)(b); or
- (b) on any matter discussed or referred to during any part of the proceedings in which the tribunal sat in private as referred to in paragraph (4)(b).

(6) An application under paragraph (5) shall be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and set out the grounds of the application.

(7) The Secretary shall notify the Minister of the Crown of an application for directions under paragraph (5) and the Minister shall be entitled to address the tribunal on the application.

(8) In these Rules, in any case in which a special advocate has been appointed to represent the interests of the applicant in accordance with paragraph (1), any reference to a party shall (save in those references specified in paragraph (9)) include the special advocate.

(9) The references mentioned in paragraph (8) are the following, namely those in rule 2(1)(b), 2(3), 3(4), 4(7)(a), 6(1) (on the second occasion “party” appears), 7(4) (on the second and third occasions “party” appears), 7(5), 7(6) (on the second occasion “party” appears), 7(7), 7(8), 8(1), 8(4) (on the first occasion “party” appears), 10(6), 11(3), 12(3)(b), 14, 15(3), 15(4), 19(1), 22(3)(a), 22(3)(d) (on the second occasion “party” appears), 22(3) (in the full out words) and 22(9).

### **Reasons for the tribunal’s decision in national security cases**

7B.—(1) This rule applies to the document setting out the reasons for the tribunal’s decision prepared under rule 12(3) in any particular Crown employment proceedings in which a direction of a Minister of the Crown has been given under rule 8(1)(a), (b) or (c), or an order of the tribunal has been made under rule 8(2)(a) read with 8(1)(a), (b) or (c).

(2) Before the Secretary enters the document referred to in rule 12(3) in the Register he shall send a copy of that document to the Minister.

(3) If the Minister considers it expedient in the interests of national security he may –

- (a) direct the tribunal that the document referred to in rule 12(3) shall not be disclosed to any person who was excluded from all or part of the proceedings and to prepare a further document setting out the reasons for its decision but with the omission of such of the reasons as are specified in the direction;
  - (b) direct the tribunal that the document referred to in rule 12(3) shall not be disclosed to any person who was excluded from all or part of the proceedings but that no further document setting out the tribunal's reasons for its decision should be prepared.
- (4) Where the Minister has directed the tribunal in accordance with paragraph (3)(a), the document prepared pursuant to that direction shall be signed by the chairman and marked in each place where an omission has been made.”

#### **Modification of rule 10 of Schedule 1**

5. In rule 10 of Schedule 1 (the hearing), for paragraph (2) substitute –
- “(2) Any hearing of or in connection with an originating application shall, subject to any direction of a Minister of the Crown under rule 8(1)(a) or order of a tribunal under rule 8(2)(a) read with 8(1)(a), take place in public.”

#### **Modification of rule 11 of Schedule 1**

6. For paragraph (2) of rule 11 of Schedule 1 (procedure at hearing), substitute –
- “(2) Subject to paragraph (1), and to any direction of a Minister of the Crown under rule 8(1)(b) or (c) (exclusion of applicant or his representative) or order of the tribunal under rule 8(2)(a) read with 8(1)(b) or (c), at the hearing of an originating application a party shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.”

#### **Modification of rule 12 of Schedule 1**

7. In rule 12 of Schedule 1 (decision of tribunal) –
- (a) after paragraph (5), insert –
    - “(5A) Where the Minister of the Crown has directed the tribunal as referred to in rule 7B(3)(a) (keeping secret certain reasons for the tribunal's decision), the clerk shall transmit the document prepared pursuant to that direction to the Secretary who shall enter the document, and the document referred to in paragraph (2), in the Register and, where applicable, shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) to the Secretary. That document shall be omitted from the Register but the Secretary shall send a copy of it, of the document referred to in paragraph (2) and the document prepared pursuant to the direction under rule 7B(3)(a), in accordance with paragraph (5D).
    - (5B) Where the Minister of the Crown has directed the tribunal as referred to in rule 7B(3)(b) (keeping secret all of the reasons for the tribunal's decision), the Secretary shall enter the document referred to in paragraph (2) in the Register and shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) to the Secretary. That document shall be omitted from the Register but the Secretary shall send a copy of it and of the document referred to in paragraph (2) in accordance with paragraph (5D).
    - (5C) Where –

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- (a) a Minister of the Crown has given a direction under rule 8(1)(d) (concealing identity of witness);
- (b) the tribunal has made an order under rule 8(2)(a) read with 8(1)(d); or
- (c) the tribunal has taken steps under rule 8(2)(c) to keep secret all or part of the reasons for its decision,

any further document prepared pursuant to that direction or order, or pursuant to those steps, as the case may be, shall be signed by the chairman and marked in each place where an omission has been made. The clerk shall transmit such further document to the Secretary who shall enter the document, and the document referred to in paragraph (2), in the Register and, where applicable, shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) to the Secretary. That document shall be omitted from the Register but the Secretary shall send a copy of it, of the document referred to in paragraph (2) and of the document prepared pursuant to the direction, order or steps referred to in sub-paragraphs (a) to (c) in accordance with paragraph (5D).

(5D) Any documents required by paragraphs (5A) to (5C) to be sent in accordance with this paragraph shall be sent by the Secretary to –

- (a) the respondent;
- (b) such of the applicant or the applicant’s representatives as was not an excluded person;
- (c) if applicable, the special advocate;
- (d) where the proceedings were referred to the tribunal by a court, to that court; and
- (e) where there are proceedings before a superior court relating to the decision in question, to that court.”;

- (b) for paragraph (8) substitute –

“(8) Clerical mistakes in the documents referred to in paragraph (2), (3) or rule 7B(4), or errors arising in those documents from an accidental slip or omission may at any time be corrected by the chairman by certificate.”; and

- (c) for paragraphs (10) and (11) substitute –

“(10) Where a document (“the first document”) omitted from the Register pursuant to paragraph (5A), (5B), (5C) or (6) is corrected by certificate under paragraph (8), the Secretary shall send a copy of the corrected document to those persons to whom in accordance with paragraph (5D) or (6) as the case may be, he sent the first document; and where there are proceedings before any superior court relating to the decision in question, he shall send a copy to that court together with a copy of the entry in the Register of the document referred to in paragraph (2), if it has been altered under paragraph (9).

(11) Where this rule or rule 7B(4) requires a document to be signed by a chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other member or members of the tribunal, who shall certify that the chairman is unable to sign.”

### **Modification of rule 13 of Schedule 1**

- 8. For paragraph (1)(c) of rule 13 of Schedule 1 (review of tribunal’s decision), substitute –

- “(c) the decision was made in the absence of a party (other than in pursuance of a direction of the Minister under rule 8(1) or an order of the tribunal under rule 8(2)(a));”.

### SCHEDULE 3

Regulations 2(2) and (6), 9, 10(3) and (4)  
and 11(2)

#### INDUSTRIAL TRIBUNALS (EQUAL VALUE) COMPLEMENTARY RULES OF PROCEDURE

*For use only in proceedings involving an equal value claim*

### PART I

#### ORDINARY CASES

#### **Modification of rule 4 of Schedule 1**

1. In rule 4 of Schedule 1 (case management) –

- (a) after paragraph (5), insert –

“(5A) Subject to paragraph (5B), a tribunal may, on the application of an expert who has been required by the tribunal to prepare a report –

- (a) require any person whom the tribunal is satisfied may have information which may be relevant to the question or matter on which the expert is required to report, to furnish, in writing, such information as the tribunal may require;
- (b) require any person to produce any documents which are in the possession, custody or power of that person and which the tribunal is satisfied may contain matter relevant to the question on which the expert is required to report.

(5B) A tribunal shall not make a requirement under paragraph (5A) –

- (a) of a conciliation officer of the Labour Relations Agency who has acted in connection with the complaint under Article 20 of the Industrial Tribunals Order(37); or
- (b) if it is satisfied that the person so required would have good grounds for refusing to comply with the requirement if it were a requirement made in connection with a hearing before the tribunal.

(5C) A person, whether or not a party, upon whom a requirement has been made under paragraph (5A), may apply to the tribunal by notice to the Secretary before the appointed time at or within which the requirement is to be complied with to vary or set aside the requirement. Notice of such application shall be given to the parties and to the expert upon whose application the requirement was made.”; and

- (b) for paragraphs (6) and (7), substitute –

“(6) Every document containing a requirement imposed under paragraph (5) or (5A) shall state that, under Article 9(4) of the Industrial Tribunals Order(38), any person who

(37) The scope of Article 20 was modified by S.I. 1997/869 (N.I. 6), S.I. 1998/1265 (N.I. 8), 1998 c. 39, S.R. 1998 No. 386, S.I. 1999/3323, S.I. 2000/219, S.R. 2001 No. 37 and S.R. 2001 No. 319

(38) Article 9(4) was modified by S.I. 1998/1265 (N.I. 8)

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without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

- (7) Where a requirement has been imposed under paragraph (1), (5) or (5A) –
- (a) on a party in his absence; or
  - (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.”

### **Insertion of rule 10A into Schedule 1**

2. After rule 10 of Schedule 1, insert –

#### **“Procedure relating to expert’s report**

10A.—(1) In any case involving an equal value claim where a dispute arises as to whether work is of equal value to other work in terms of the demands made on the person employed on the work (for instance under such headings as effort, skill and decision) (in this rule, hereinafter referred to as “the question”) the tribunal shall, except in cases where it is satisfied that there are no reasonable grounds for determining the question in the affirmative, determine whether to require an expert to prepare a report with respect to the question.

(2) Before determining under paragraph (1) whether to require an expert to prepare a report the tribunal shall give the parties an opportunity to make representations to the tribunal as to whether an expert should be so required.

(3) Where the tribunal has determined not to require an expert to prepare a report it may nevertheless, at any time during its consideration of the question, require an expert to prepare a report, but shall not do so unless it has given the parties a further opportunity to make representations to the tribunal as to whether an expert should be so required.

- (4) Any requirement to prepare a report shall be made in writing and shall set out –

- (a) the name and address of each of the parties;
- (b) the address of the establishment at which the applicant is (or, as the case may be, was) employed;
- (c) the question;
- (d) the identity of the person with reference to whose work the question arises;
- (e) the date by which the expert is required to send his report to the tribunal; and
- (f) the length of the intervals, during the currency of the requirement to prepare the report, before the expiration of which the expert must send progress reports pursuant to paragraph (8), and

the Secretary shall send a copy of the requirement to each of the parties together with a notice informing them that a party who unreasonably delays the preparation of the expert’s report may have an award of costs made against him, which may include an award in respect of the expert’s fees, or have his originating application or notice of appearance struck out.

- (5) The requirement shall stipulate that the expert shall –

- (a) take account of all such information supplied and all such representations made to him as have a bearing on the question;

- (b) before drawing up his report, produce and send to the parties a written summary of the said information and representations and invite the representations of the parties upon the material contained therein;
  - (c) make his report to the tribunal in a document which shall reproduce the summary and contain a brief account of any representations received from the parties upon it, any conclusion he may have reached upon the question and the reasons for that conclusion or, as the case may be, for his failure to reach such a conclusion;
  - (d) take no account of the difference of sex and at all times act fairly.
- (6) Where a tribunal requires an expert to prepare a report, it shall adjourn the hearing.
- (7) In paragraphs (8), (9), (11) and (12), “the required date” means the most recent date specified as the date by which the expert must send his report to the tribunal either in the requirement made upon him under paragraph (4) or in a notice given to him under paragraph (11).
- (8) Before the expiration of each interval specified in the requirement given to the expert under paragraph (4), the expert shall send a progress report to the tribunal –
- (a) stating whether he considers that he will be able to send his report to the tribunal by the required date; and
  - (b) if he considers that he will be unable to do so, giving the reasons for the delay and the date by which he now expects to send his report to the tribunal, and
- where a progress report states that the expert considers that he will be unable to send his report to the tribunal by the required date the Secretary shall send a copy to each party.
- (9) If at any time when a progress report under paragraph (8) is not imminent, the expert comes to the view that he will be unable to send his report to the tribunal by the required date, he shall give notice in writing to the tribunal –
- (a) stating that fact; and
  - (b) giving the reasons for the delay and the date by which he now expects to send his report to the tribunal, and
- the Secretary shall send a copy of any such notice to each party.
- (10) In giving the reasons for any delay, pursuant to paragraph (8) or (9), the expert shall, in particular, state whether he considers that any action (including an omission) by a party has contributed to the delay and, if he so considers –
- (a) identify the party;
  - (b) give particulars of the action;
  - (c) describe how it has contributed to the delay; and
  - (d) give an assessment of the extent to which the delay is attributable to it.
- (11) On receiving a progress report under paragraph (8) or a notice under paragraph (9) stating that the expert considers that he will be unable to send his report to the tribunal by the required date, the tribunal shall do one of the following –
- (a) give written notice to the expert that he is still required to send the report by the required date;
  - (b) give written notice to the expert substituting a later date as the required date; or
  - (c) if, but only if, it considers that it would be in the interests of justice to replace the expert, revoke, by notice in writing to the expert, the requirement to prepare a report,

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but shall not do so before it has informed the parties of the action it proposes to take and given each party the opportunity to make representations.

(12) Paragraph (11) shall also apply where the expert does not send his report to the tribunal by the required date but as if sub-paragraph (a) were excluded.

(13) Where, acting under paragraph (11), a tribunal has revoked the requirement made upon an expert to prepare a report it shall require another expert to prepare a report by proceeding under this rule as if it had just determined to require an expert to prepare a report, and the rule shall apply accordingly.

(14) Where in giving the reasons for any delay pursuant to paragraph (8) or (9), the expert has, in accordance with paragraph (10), stated that an action by a party has contributed to the delay, the tribunal shall consider whether the party has unreasonably delayed the preparation of the expert's report and, if it so considers, shall either –

- (a) make an order under and in accordance with rule 14; or
- (b) strike out the whole or part of the originating application, or, as the case may be, of the notice of appearance and, where appropriate, direct that a respondent shall be debarred from defending altogether,

but the tribunal shall not exercise its powers under this paragraph without giving the party an opportunity to make representations.

(15) Notwithstanding rule 14(1)(b), the tribunal may, in making an order under rule 14 in pursuance of paragraph (14), order that a party shall pay to the Department the whole, or any part, of any fees and allowances paid or payable to the expert in respect of the time so far spent by him in carrying out work pursuant to the requirement to prepare a report.

(16) Where a tribunal has received the report of an expert, it shall send a copy of the report to each party and fix a date for the hearing of the case to be resumed; and the date so fixed shall be the earliest reasonably practicable date, but shall be no less than 14 days after the date on which the report is sent to the parties.

(17) Upon the resumption of the hearing of the case in accordance with paragraph (16) the report shall be admitted as evidence in the case unless the tribunal has exercised its power under paragraph (18) not to admit the report.

(18) Where the tribunal, on the application of one or more of the parties or otherwise, forms the view –

- (a) that the expert has not complied with a stipulation in paragraph (5);
- (b) that the conclusion contained in the report is one which, taking due account of the information supplied and representations made to the expert, could not reasonably have been reached; or
- (c) that for some other material reason (other than disagreement with the conclusion that the applicant's work is or is not of equal value or with the reasoning leading to that conclusion) the report is unsatisfactory,

the tribunal may, if it thinks fit, determine not to admit the report, and in such a case the tribunal shall proceed under this rule as if it had just determined to require an expert to prepare a report, and the rule shall apply accordingly.

(19) In forming its view on the matters contained in paragraph (18)(a), (b) and (c) the tribunal shall take account of any representations of the parties thereon and may in that connection, subject to rule 11(2A) and (2B), permit any party to give evidence upon, to call witnesses and to question any witness upon any matter relevant thereto.

(20) The tribunal may, at any time after it has received the report of an expert, require that expert (or, if that is impracticable, another expert) to explain any matter contained in



that report or, having regard to such matters as may be set out in the requirement, to give further consideration to the question.

(21) A requirement under paragraph (20) shall stipulate that the expert shall make his reply in writing to the tribunal, giving his explanation or, as the case may be, setting down any conclusion which may result from his further consideration and his reasons for that conclusion.

(22) Paragraphs (4), (7) to (12), (14) and (15) shall apply in relation to a requirement under paragraph (20) as if that requirement was a requirement to prepare a report except that –

- (a) the duty on the Secretary under paragraph (4) to send a notice concerning unreasonable delay by the parties of the preparation of the expert’s report shall not apply;
- (b) for the purpose of such application the following sub-paragraphs shall be substituted for the sub-paragraphs of paragraph (11) –
  - “(a) give written notice to the expert that he is still required to send the reply by the required date;
  - (b) give written notice to the expert substituting a later date as the required date;
  - (c) notify the expert in writing that the requirement is cancelled without requiring another expert to fulfil it; or
  - (d) so notify the expert and require another expert to fulfil the requirement in accordance with paragraph (20);” and;
- (c) the tribunal may decide not to require the expert to send progress reports to the tribunal if it considers the requirement to be inappropriate in the circumstances and in that event –
  - (i) paragraphs (4)(f) and (8) shall not apply; and
  - (ii) paragraph (9) shall apply if the expert at any time comes to the view that he will be unable to send his reply to the tribunal by the required date.

(23) Where the tribunal has received a reply from the expert under paragraph (21), it shall send a copy of the reply to each of the parties and shall allow the parties to make representations thereon, and the reply shall be treated as information furnished to the tribunal and be given such weight as the tribunal thinks fit.

(24) Where a tribunal has determined not to admit a report under paragraph (18), that report shall be treated for all purposes (other than the award of costs or allowances under rule 14) connected with the proceedings as if it had not been received by the tribunal and no further account shall be taken of it, and the requirement on the expert to prepare a report shall lapse.”

### **Modification of rule 11 of Schedule 1**

3. For paragraphs (1) and (2) of rule 11 of Schedule 1, substitute –

#### **“Procedure at hearing**

11.—(1) The tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall not be bound by any statutory provision or rule of law relating to the admissibility of evidence in proceedings before the courts of law. The tribunal shall make such enquiries of persons appearing before it and witnesses as it considers appropriate and, subject to paragraphs (2A), (2B), (2C), (2D) and (2E), shall otherwise conduct the

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hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Subject to paragraphs (1), (2A), (2B), (2C) and (2D), at the hearing of the originating application a party shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2A) The tribunal may, and shall upon the application of a party, require the attendance of an expert who has prepared a report in connection with an equal value claim in any hearing relating to that claim. Where an expert attends in compliance with such requirement any party may, subject to paragraph (1), cross-examine the expert on his report and on any other matter pertaining to the question on which the expert was required to report.

(2B) At any time after the tribunal has received the report of the expert, any party may, on giving reasonable notice of his intention to do so to the tribunal and to any other party to the claim, call one witness to give expert evidence on the question on which the tribunal has required the expert to prepare a report; and where such evidence is given, any other party may cross-examine the person giving that evidence upon it.

(2C) Except as provided in rule 10A(19) or by paragraph (2D), no party may give evidence upon, or question any witness upon, any matter of fact upon which a conclusion in the report of the expert is based.

(2D) Subject to paragraphs (2A) and (2B), a tribunal may, notwithstanding paragraph (2C), permit a party to give evidence upon, to call witnesses and to question any witness upon any such matters of fact as are referred to in paragraph (2C) if either –

- (a) the matter of fact is relevant to and is raised in connection with the issue contained in subsection (3) of section 1 of the Act of 1970 (defence of genuine material factor)<sup>(39)</sup> upon which the determination of the tribunal is being sought; or
- (b) the report of the expert contains no conclusion on the question of whether the applicant's work and the work of the person identified in the requirement of the tribunal under rule 10A(4) are of equal value and the tribunal is satisfied that the absence of that conclusion is wholly or mainly due to the refusal or deliberate omission of a person required by the tribunal under rule 4(5A) to furnish information or to produce documents to comply with that requirement.

(2E) A tribunal may, on the application of a party, if in the circumstances of the case, having regard to the considerations expressed in paragraph (1), it considers that it is appropriate so to proceed, hear evidence upon and permit the parties to address it upon the issue contained in subsection (3) of section 1 of the Act of 1970 (defence of genuine material factor) before determining whether to require an expert to prepare a report under rule 10A.”

#### **Modification of rule 12 of Schedule 1**

4. In rule 12 of Schedule 1 (decision of tribunal) –

(a) after paragraph (4), insert –

“(4A) There shall be appended to the document referred to in paragraph (3) a copy of the report (if any) of an expert received by the tribunal in the course of the proceedings.”;

(b) for paragraph (5) substitute –

“(5) The clerk shall transmit the documents referred to in paragraphs (2) and (3) and the copy of the report referred to in paragraph (4A), if any, to the Secretary who shall

<sup>(39)</sup> The subsection was modified by [S.R. 1984 No. 16](#)

enter them in the Register and shall send a copy of the entry to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court.”; and

(c) for paragraph (6) substitute –

“(6) The document referred to in paragraph (3) and the copy of the report referred to in paragraph (4A), if any, shall be omitted from the Register in any case in which evidence had been heard in private and the tribunal so directs. In such a case the Secretary shall send that document to each of the parties; and where there are proceedings before a superior court relating to the decision in question, he shall send the document to that court, together with a copy of the entry in the Register of the document referred to in paragraph (2).”

#### **Modification of rule 14 of Schedule 1**

5. After paragraph (2) of rule 14 of Schedule 1 (costs), insert –

“(2A) For the purposes of paragraph (1)(a), the costs in respect of which a tribunal may make an order include costs incurred by the party in whose favour the order is to be made in or in connection with any investigations carried out by an expert in preparing his report.”

#### **Modification of rule 15 of Schedule 1**

6. In rule 15 of Schedule 1 (miscellaneous powers) –

(a) for paragraph (5) substitute –

“(5) A tribunal may, before determining an application under rule 4 or rule 19, require the party making the application or, in the case of an application under rule 4(5A), the expert, to give notice of it to every other party (or, in the case of an application by the expert, to the parties and any other person on whom the tribunal is asked, in the application, to impose a requirement). The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified for the purposes of the application by the tribunal.”; and

(b) after paragraph (6), insert –

“(6A) Without prejudice to paragraph (7), the tribunal shall, before proceeding to hear the parties on an equal value claim, invite them to apply for an adjournment for the purpose of seeking to reach a settlement of the claim and shall, if both or all the parties agree to such a course, grant an adjournment for that purpose.

(6B) If, after the tribunal has adjourned the hearing under rule 10A(6) but before the tribunal has received the report of the expert, the applicant gives notice under paragraph (2)(a), the tribunal shall notify the expert that the requirement to prepare a report has ceased. The notice shall be without prejudice to the operation of rule 14(2A).”

## **PART II**

### **NATIONAL SECURITY CASES**

#### **Modification of rule 4 of Schedule 1**

1. At the end of rule 4 of Schedule 1 (case management) insert –

“(9) Where –

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- (a) a Minister of the Crown has at any stage issued a direction under rule 8(1)(b) or (c) (exclusion of applicant or his representative), or the tribunal has at any stage made an order under rule 8(2)(a) read with 8(1)(b) or (c); and
- (b) the tribunal (whether on application of a party or of its own motion) is considering whether to impose, or has imposed, a requirement under paragraph (1), (5) or (5A) on any person,

a Minister of the Crown (whether or not he is a party to the proceedings) may make an application to the tribunal objecting to the imposition of the requirement under paragraph (1), (5) or (5A), or, where a requirement has been imposed, an application to vary or set aside the requirement, as the case may be. The tribunal shall hear and determine the Minister's application in private and the Minister shall be entitled to address the tribunal thereon. The application shall be made by notice to the Secretary and the Secretary shall give notice of the application to each party."

### **Substitution of rule 7B in Schedule 1**

2. For rule 7B of Schedule 1 (as referred to in paragraph 4 of Schedule 2), substitute –

#### **“Reasons for the tribunal’s decision in national security cases**

7B.—(1) This rule applies to the document setting out the reasons for the tribunal’s decision prepared under rule 12(3), and the report (if any) of an expert received by the tribunal in the course of the proceedings, in any particular Crown employment proceedings in which a direction of a Minister of the Crown has been given under rule 8(1)(a), (b) or (c), or an order of the tribunal has been made under rule 8(2)(a) read with 8(1)(a), (b) or (c).

(2) Before the Secretary enters the document referred to in rule 12(3), and the copy of the report referred to in paragraph (1), in the Register he shall send a copy of those documents to the Minister.

- (3) If the Minister considers it expedient in the interests of national security he may –
  - (a) direct the tribunal that the document referred to in rule 12(3) and the report referred to in paragraph (1) shall not be disclosed to any person who was excluded from all or part of the proceedings;
  - (b) direct the tribunal to prepare a further document setting out the reasons for its decision but with the omission of such of the reasons as are specified in the direction;
  - (c) direct the tribunal that no further document setting out the tribunal’s reasons for its decision should be prepared;
  - (d) direct the tribunal that a further copy of the report referred to in paragraph (1) be prepared, with the omission of such parts of the report as are specified in the direction;
  - (e) direct the tribunal that no further report referred to in paragraph (1) be prepared.

(4) Where the Minister has directed the tribunal in accordance with paragraph (3)(b) or (d), any document prepared pursuant to that direction shall be signed by the chairman and marked in each place where an omission has been made.”

### **Modification of rule 11 of Schedule 1**

3. For paragraph (2) of rule 11 of Schedule 1 (procedure) substitute –

“(2) Subject to paragraphs (1), (2A), (2B), (2C) and (2D), and to any direction of a Minister of the Crown under rule 8(1)(b) or (c) or order of the tribunal under rule 8(2)(a)

read with 8(1)(b) or (c), at the hearing of the originating application a party shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.”

#### **Modification of rule 12 of Schedule 1**

4. In rule 12 of Schedule 1 (decision of tribunal), after paragraph (5), insert –

“(5A) Where the Minister of the Crown has directed the tribunal as referred to in rule 7B(3)(b) or (d) (keeping secret certain reasons for the tribunal’s decision or certain parts of the expert’s report), the clerk shall transmit any document prepared pursuant to that direction to the Secretary who shall enter the document, and the document referred to in paragraph (2), in the Register and, where applicable, shall send a copy of the entry to the excluded person. The clerk shall also transmit the document referred to in paragraph (3) and a copy of the report referred to in paragraph (4A), if any, to the Secretary. Those documents shall be omitted from the Register but the Secretary shall send a copy of them, the document referred to in paragraph (2) and any document prepared pursuant to the direction under rule 7B(3) (b) or (d) in accordance with paragraph (5D).

(5B) Where the Minister of the Crown has directed the tribunal as referred to in rule 7B(3)(c) or (e) (keeping secret all of the reasons for the tribunal’s decision or all of the expert’s report), the Secretary shall enter the document referred to in paragraph (2) in the Register and shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) and a copy of the report referred to in paragraph (4A), if any, to the Secretary. Those documents shall be omitted from the Register but the Secretary shall send a copy of them and of the document referred to in paragraph (2) in accordance with paragraph (5D).

(5C) Where –

- (a) a Minister of the Crown has given a direction under rule 8(1)(d) (concealing identity of witness);
- (b) the tribunal has made an order under rule 8(2)(a) read with 8(1)(d); or
- (c) the tribunal has taken steps under rule 8(2)(c) to keep secret all or part of the reasons for its decision,

any further document prepared pursuant to that direction or order, or pursuant to those steps, as the case may be, shall be signed by the chairman and marked in each place where an omission has been made. The clerk shall transmit such further document to the Secretary who shall enter the document, and the document referred to in paragraph (2), in the Register and, where applicable, shall send a copy of the entry to any excluded person. The clerk shall also transmit the document referred to in paragraph (3) and a copy of the report referred to in paragraph (4A), if any, to the Secretary. Those documents shall be omitted from the Register but the Secretary shall send a copy of them, the document referred to in paragraph (2) and any document prepared pursuant to the direction, order or steps referred to in sub-paragraphs (a) to (c) in accordance with paragraph (5D).

(5D) Any documents required by paragraphs (5A) to (5C) to be sent in accordance with this paragraph shall be sent by the Secretary to –

- (a) the respondent;
- (b) such of the applicant or the applicant’s representatives as was not an excluded person;
- (c) if applicable, the special advocate;
- (d) where the proceedings were referred to the tribunal by a court, to that court; and

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- (e) where there are proceedings before a superior court relating to the decision in question, to that court.”

SCHEDULE 4

Regulations 2(3), (6) and (10), 9, 10(6)(a)  
and 11(2)

INDUSTRIAL TRIBUNALS (LEVY APPEALS) RULES OF PROCEDURE

*For use only in proceedings in levy appeals*

**Notice of appeal**

1. An appeal against an assessment to a levy shall be instituted by the appellant sending to the Board in duplicate a notice of appeal which shall be substantially in accordance with Form 1, and shall set out the grounds of the appeal.

**Duty of the Board upon receipt of notice of appeal**

2.—(1) Subject to the provisions of rules 3 and 4, the Board shall, within 21 days of receiving the notice of appeal, send to the Secretary –

- (a) one copy of the notice of appeal;
- (b) a copy of the assessment notice and of any notice by the Board allowing further time for appealing;
- (c) a notice giving the Board’s address for service under these Rules where that address is different from the address specified in the assessment notice as the address for service of a notice of appeal; and
- (d) any representations in writing relating to the appeal that the Board may then desire to submit to the tribunal.

(2) Failure to comply with any provision of this rule or rule 3 shall not render the appeal or anything done in pursuance thereof invalid.

**Further particulars of appeal**

3.—(1) Subject to rule 4, this rule applies in a case where the Board upon receiving the notice of appeal requires further particulars of the grounds on which the appellant intends to rely and of any facts and contentions relevant thereto.

(2) The Board shall within 21 days of receiving the notice of appeal send to the appellant a notice specifying the further particulars required by the Board.

(3) The appellant shall within 21 days of receiving the notice of appeal, or within such further period as the Board may allow, send to the Board in duplicate such further particulars.

(4) Subject to the provisions of paragraph (5), the Board shall, within 21 days of receiving such further particulars, send to the Secretary –

- (a) the documents specified in rule 2;
- (b) a copy of the notice requiring the further particulars; and
- (c) such further particulars, and any representations in writing with respect thereto that the Board may then desire to submit to the tribunal.

(5) If such further particulars are not received by the Board within the time specified under paragraph (3), the documents mentioned in sub-paragraphs (a) and (b) of paragraph (4) shall be sent by the Board to the Secretary –

- (a) within 50 days of the receipt of the notice of appeal by the Board; or
- (b) if the Board has allowed a further period of time for delivery of further particulars under paragraph (3), within 7 days of the end of that period.

#### **Withdrawal of appeal or assessment**

4.—(1) The appellant may withdraw the notice of appeal by notice given to the Board at any time before the entry of the appeal in the Register under rule 5(a) and in that event no further action shall be taken in relation to the appeal.

(2) Where an assessment is withdrawn by the Board, no further action shall be taken in relation to the appeal.

#### **Duty of the Secretary to enter details in the Register, etc.**

5. Upon receiving from the Board the relevant documents in accordance with rule 2(1), 3(4) or 3(5) the Secretary shall as soon as practicable –

- (a) enter the following details of the appeal in the Register, namely –
  - (i) the case number;
  - (ii) the date the Secretary received the relevant documents;
  - (iii) the name and address of the appellant;
  - (iv) the name and address of the Board;
  - (v) the place where the appeal is to be held; and
  - (vi) the fact that the appeal is an appeal by a person assessed to levy imposed under a levy order made under Article 23(2) of the Order of 1984;
- (b) give notice to the appellant and to the Board of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the appeal) and of the address to which notices and other communications to the Secretary shall be sent;
- (c) give notice to the appellant of the Board’s address for service under these Rules where that address is different from the address specified in the assessment notice; and
- (d) send to the appellant a copy of any representations in writing that the Board has submitted to the tribunal under rule 2 or rule 3.

#### **Directions for further particulars**

6.—(1) In any case in which an appellant has not sent to the Board further particulars in accordance with a notice sent by the Board under rule 3 the tribunal may, on the application of the Board (which may be sent to the Secretary with the documents referred to in rule 3(5)), by notice direct the appellant to supply such further particulars of the grounds on which he intends to rely and of any facts and contentions relevant thereto as may be specified in the notice, and the appellant shall send such particulars in duplicate to the Secretary within such time as the tribunal shall direct.

(2) Upon receipt of further particulars from the appellant the Secretary shall send a copy thereof to the Board.

(3) If the appellant makes default in complying with a direction made by the tribunal under this rule the tribunal may on the application of the Board dismiss the appeal or give such other directions as may seem proper.

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(4) The tribunal may at any time by notice direct the Board to furnish any particulars relating to the assessment which appear to be requisite for the decision of the appeal, and thereupon the Board shall send the particulars to the Secretary and to the appellant.

#### **Attendance of witnesses and discovery**

7.—(1) On the application of the appellant or the Board made either by notice to the Secretary or at the hearing the tribunal may –

- (a) require the attendance of any person in Northern Ireland, including a party, either to give evidence or to produce documents or both; or
- (b) require one party to grant to another such discovery and inspection (including the taking of copies) of documents as might be granted by the county court,

and may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

(2) Where a requirement has been imposed under paragraph (1) –

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.

(3) If a requirement under paragraph (1) is not complied with, the tribunal –

- (a) may make an order in respect of costs under rule 13(1)(a); or
- (b) before or at the hearing, may strike out the whole or part of the notice of appeal,

but a tribunal shall not exercise its powers under this paragraph unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so, or the party has been given an opportunity to show cause orally why the powers conferred by this paragraph should not be exercised.

(4) Every document containing a requirement imposed under paragraph (1) shall contain a reference to the fact that, under Article 9(4) of the Industrial Tribunals Order, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

#### **Time and place of hearing of appeal**

8. The President or the Vice-President shall fix the date, time and place of the hearing of an appeal, and the Secretary shall, not less than 14 days before the date so fixed, send to the appellant and to the Board a notice substantially in accordance with Form 2.

#### **The hearing**

9.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with Article 6(1), (2) and (3)(40) of the Industrial Tribunals Order.

(2) Subject to paragraph (3), any hearing of or in connection with an appeal shall take place in public.

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(40) Article 6(3) was amended by Articles 4 and 5 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)) and by section 27 of the National Minimum Wage Act (1998 c. 39)



(3) A tribunal may sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of –

- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision;
- (b) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Order of 1992, cause substantial injury to any undertaking of his or any undertaking in which he works.

(4) If a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the originating application he shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy to each other party.

(5) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Secretary less than 7 days before the hearing.

### **Procedure at hearing**

10.—(1) At the hearing of an appeal the appellant and the Board shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2) If the appellant or the Board or both of them shall fail to appear or to be represented at the time and place fixed for a hearing the tribunal may dispose of the appeal or application in the absence of such party or parties or may adjourn the hearing to a later date; provided that before disposing of an appeal in the absence of either or both parties the tribunal shall consider any representations submitted by such party or parties pursuant to rule 9(4) or (5).

(3) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

### **Decision of tribunal**

11.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) The clerk shall transmit the document signed by the chairman to the Secretary who shall enter it in the Register, and shall send a copy of the entry to the appellant and the Board.

(4) The reasons for the decision shall be omitted from the Register in any case in which –

- (a) evidence has been heard in private and the tribunal so directs; or
- (b) the tribunal on the application of the appellant so directs on the ground that disclosure will be contrary to the interests of the appellant,

and in that event a specification of the reasons shall be sent to the appellant and the Board, and to any superior court in any proceedings relating to the decision, together with the copy of the entry in the Registry of the document referred to in paragraph (3).

(5) The chairman of the tribunal shall have power by certificate to correct in documents recording the tribunal's decisions clerical mistakes or errors arising therein from any accidental slip or omission.

(6) The clerk shall send a copy of any documents corrected under paragraph (5) and the certificate of the chairman to the Secretary who shall as soon as practicable make such correction as may be

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necessary in the Register and shall send a copy of the corrected entry or the corrected reasons, as the case may be, to the appellant and the Board.

- (7) If any decision is –
- (a) corrected under paragraph (5);
  - (b) revoked or varied under rule 12; or
  - (c) altered in any way by order of a superior court,

the Secretary shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of any entry so altered to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court.

(8) Where this rule requires a document to be signed by the chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other members or member of the tribunal, who shall certify that the chairman is unable to sign.

### **Review of tribunal's decision**

12.—(1) Subject to the provisions of this rule, a tribunal shall have power, on the application of a party or of its own motion, to review any decision on the grounds that –

- (a) the decision was wrongly made as a result of an error on the part of the staff of the Office of the Tribunals;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (d) new evidence has become available since the making of the decision provided that its existence could not have been reasonably known of or foreseen; or
- (e) the interests of justice require such a review.

(2) A tribunal may not review a decision of its own motion unless it is the tribunal which issued the decision.

(3) A tribunal may only review a decision of its own motion if –

- (a) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review; and
- (b) such notice has been sent on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties.

(4) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.

(5) An application for the purposes of paragraph (1) may be refused by the President, the Vice-President or by the chairman of the tribunal which decided the case if in his opinion it has no reasonable prospect of success and he shall state the reasons for his opinion.

(6) If such an application is not refused under paragraph (5) it shall be heard by the tribunal which decided the case, or –

- (a) where it is not practicable for it to be heard by that tribunal; or
- (b) where the decision was made by a chairman acting alone under rule 14(4),

by a tribunal appointed by either the President or the Vice-President.

(7) On reviewing its decision a tribunal may confirm the decision, or vary or revoke the decision; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

### **Costs**

13.—(1) The decision of the tribunal may include –

- (a) an order that the Board shall pay to the appellant or that the appellant shall pay to the Board either a specified sum in respect of the costs incurred by the appellant or the Board, as the case may be, or, in default of agreement, the amount of those costs as assessed by way of detailed assessment;
- (b) an order that the Board or the appellant shall pay to the Department the whole, or any part of, any allowances (other than allowances paid to members of tribunals) paid by the Department under Article 7(2) and (3) of the Industrial Tribunals Order to any person, for the purposes of, or in connection with, his attendance at the tribunal.

(2) Any costs required by an order under this rule to be assessed by way of detailed assessment may be so assessed in accordance with such of the scales prescribed by county court rules for proceedings in the county court as shall be directed by the order.

### **Miscellaneous powers**

14.—(1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure.

(2) The tribunal may –

- (a) before granting an application referred to in rule 6(1) or (3), require the party making the application to give notice thereof to the other party;
- (b) if at any time after the entry of the appeal in the Register the appellant gives notice of the abandonment of his appeal to the Secretary and to the Board, or the Board gives notice to the Secretary and to the appellant that the appeal is not contested, dismiss or allow the appeal, as the case may be, and thereupon rule 13 shall apply;
- (c) if the appellant and the Board agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(2) A notice under paragraph (1)(a) shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified by the tribunal for the purposes of the application.

(3) A chairman may postpone the day or time fixed for, or adjourn, any hearing and vary any such postponement or adjournment.

(4) Any act required or authorised by these Rules to be done by a tribunal may be done by a chairman except –

- (a) the hearing of an appeal under rule 9; or
- (b) an act required or authorised to be so done by rule 10 or 11 which the rule implies is to be done by the tribunal which is hearing or heard the appeal;
- (c) the hearing of an application under rule 12(1), and the variation or revocation of a decision, and ordering of a re-hearing, under rule 12(7).

### **Applications for extension of time and for directions**

15.—(1) An application to the tribunal for an extension of the time appointed by these Rules for doing any act may be made by the appellant or the Board either before or (subject to rule 7(3)) after the expiration of the time so appointed.

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(2) The appellant or the Board may at any time apply to the tribunal for directions on any matter arising in connection with the appeal.

(3) An application made under the foregoing provisions of these Rules or to the tribunal for an extension of the time for appealing against an assessment to a levy shall be made by sending to the Secretary in duplicate a notice of application which shall state the title of the appeal, or the number of the assessment in the case where an appeal has not been entered in the Register, and shall set out the grounds of the application.

(4) The Secretary shall give notice to the appellant and to the Board of any extension of time granted by the tribunal or of any directions given by the tribunal in pursuance of these Rules.

### **Devolution issues**

16.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time –

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send each of the relevant authorities a copy of the notice of appeal.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

### **Notices, etc.**

17.—(1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent through a document exchange in accordance with paragraph (5), or by ordinary post (subject to paragraph (6)), or delivered to or at –

- (a) in the case of a notice or document directed to the Department in proceedings to which it is not a party, the offices of the Department for Employment and Learning at Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD, or such other office as may be notified by the Department;
- (b) in the case of a notice or document directed to the Attorney General for Northern Ireland pursuant to rule 16, the Attorney General's Chambers, 9 Buckingham Gate, London SW1E 7JP;
- (c) in the case of any document directed to the Board, the Board's address for service;
- (d) in the case of a document directed to the appellant –
  - (i) the address specified in his notice of appeal to which documents are to be sent, or in a notice under paragraph (4); or
  - (ii) failing such a notice or if a notice sent to such an address has been returned, his last known address or place of business in the United Kingdom, or if the appellant is a corporate body, the body's registered or principal office in the United Kingdom, or in any case such address or place outside the United Kingdom as the President or the Vice-President may allow;
- (e) in the case of a document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the United

Kingdom, or if such a person is a corporate body, the body's registered or principal office in the United Kingdom,

and a notice or document sent or given to the authorised representative of the appellant or of the Board shall be deemed to have been sent or given to the appellant or the Board as the case may be.

(4) The Secretary shall give notice to the appellant and the Board of any change in an address of which notice has been given to the parties under rule 5(b).

(5) Where –

- (a) the proper address for service of any notice or document required or authorised by these Rules to be sent or given to any person includes a numbered box at a document exchange; or
- (b) there is inscribed on the writing paper of the party on whom the notice or document is to be served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the notice or document that he is unwilling to accept service through a document exchange,

service of the notice or document may be effected by leaving it addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any notice or document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(6) In any case he considers appropriate the President or the Vice-President may direct that there shall be substituted service in such manner as he may deem fit.

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APPENDIX

FORM 1 INDUSTRIAL TRAINING (NORTHERN IRELAND) ORDER 1984 NOTICE OF APPEAL AGAINST AN ASSESSMENT

I/We+

CONSTRUCTION INDUSTRY TRAINING BOARD, 17 DUNDROD ROAD, CRUMLIN, CO ANTRIM BT29 4SR

AND

THE SECRETARY OF THE INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL

I/We+ ..... of ..... #

Hereby give notice that I/we+ appeal to an industrial tribunal under the Industrial Training (Northern Ireland) Order 1984, Article 23, against the assessment to the levy made by the above-mentioned industry training board on ..... 20 ....., being the assessment numbered

Grounds of Appeal

The grounds of my/our+ appeal are as follows:

.....  
.....  
.....  
.....

Address for Service

All communications regarding the appeal should be addressed to me/us+ at ..... #

And to my/our+ Solicitor(s)/Agent(s)+,

..... at ..... #

Date ..... 20.....

Signed .....

+ Delete if inappropriate.

# Insert address applicable.

~ If the notice is signed on behalf of the appellant, the signatory must state in what capacity or what authority he signs.

FORM 2 INDUSTRIAL TRAINING (NORTHERN IRELAND) ORDER 1984 NOTICE OF HEARING

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NOTICE OF HEARING

Case No ..... Office of the Industrial Tribunals and the Fair Employment Tribunal  
Long Bridge House, 22-24 Waring Street  
Belfast BT1 2LB  
Tribunal .....

NOTICE IS HEREBY GIVEN that the appeal of.....  
against the assessment or the levy made by the Construction Industry Training Board and numbered:  
.....  
will be heard by an industrial tribunal at .....  
on the ..... day of ..... at ..... a.m./p.m. or as soon as may be thereafter.

[delete as appropriate]

Unless the appellant receives from me a communication to the contrary, he should in his own interest appear at the hearing with his witnesses at the above time and place.

The appellant is entitled to be represented by counsel or solicitor or by another person.

If for any reason the appellant does not propose, or is unable, to appear at the hearing either in person or by representative, the appellant should immediately inform me in writing at the address mentioned at the head of this notice, stating the case number of the appeal and the reasons for the inability to attend or to be represented.

The appellant and the Board are entitled to submit representations in writing for consideration of the tribunal at the hearing of the appeal. Any such representations must be received by the Secretary of the Industrial Tribunals at the address mentioned at the head of this notice on or before ..... [insert date] and a copy must be sent at the same time to the other party. If either or both parties fail to attend the hearing, the tribunal may dispose of the appeal in their absence, but in such case the tribunal will consider any representations so submitted.

Date ..... 20....

Signed .....

Secretary

To the Appellant.....

And

To the Construction Industry Training Board.

SCHEDULE 5

Regulations 2(4), (6) and (10), 9, 10(6)(b) and 11(2)

INDUSTRIAL TRIBUNALS (IMPROVEMENT AND PROHIBITION NOTICES APPEALS) RULES OF PROCEDURE

*For use only in proceedings on an appeal against an improvement or prohibition notice*

**Notice of appeal**

1. An appeal shall be commenced by the appellant sending to the Secretary a notice of appeal which shall be in writing and shall set out –

- (a) the name and address of the appellant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the appeal to be sent;

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- (b) the date of the improvement notice or prohibition notice appealed against and the address of the premises or place concerned;
- (c) the name and address of the respondent;
- (d) particulars of the requirements or directions appealed against; and
- (e) the grounds of the appeal.

### **Time limit for bringing appeal**

2.—(1) Subject to paragraph (2), the notice of appeal shall be sent to the Secretary within 21 days from the date of the service on the appellant of the notice appealed against.

(2) A tribunal may extend the time mentioned in paragraph (1) where it is satisfied, on an application made in writing to the Secretary either before or after the expiration of that time, that it is not or was not reasonably practicable for an appeal to be brought within that time.

### **Duty of the Secretary upon receipt of notice of appeal**

3. Upon receiving a notice of appeal the Secretary shall –
- (a) enter the following details of the appeal in the Register, namely –
    - (i) the case number;
    - (ii) the date the Secretary received the notice of appeal;
    - (iii) the name and address of the appellant;
    - (iv) the name and address of the respondent;
    - (v) the place where the appeal is to be held; and
    - (vi) the fact that the appeal is an appeal against an improvement or prohibition notice, as the case may be, under Article 26 of the Order of 1978<sup>(41)</sup>;
  - (b) send a copy of the notice of appeal to the respondent; and
  - (c) inform the parties in writing of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent.

### **Application for direction suspending the operation of a prohibition notice**

4.—(1) Where an appeal has been brought against a prohibition notice and an application is made to the tribunal by the appellant in pursuance of Article 26(2)(b) of the Order of 1978 for a direction suspending the operation of the notice until the appeal is finally disposed of or withdrawn, the application shall be sent in writing to the Secretary and shall set out –

- (a) the case number of the appeal if known to the appellant or particulars sufficient to identify the appeal; and
- (b) the grounds on which the application is made.

(2) Upon receiving the application, the Secretary shall enter the fact of it against the entry in the Register relating to the appeal and shall send a copy of it to the respondent.

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(41) Modifications to Article 26 were made by S.I. 1984/1159 (N.I. 9) and by S.R. 2000 No. 87, the latter of which under specific circumstances extended the meaning of “employee” and “at work” for the purposes of Regulations made under Part II of the Order of 1978. Further modifications were made by S.R. 2000 No. 120, which extended the definitions of “work” and “at work” for the purposes of Part II of that Order



### **Power to require attendance of witnesses and production of documents, etc.**

5.—(1) A tribunal may on the application of a party made either by notice to the Secretary or at the hearing –

- (a) require a party to furnish in writing to the other party further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) require the attendance of any person in Northern Ireland, including a party, either to give evidence or to produce any documents or both; or
- (c) require one party to grant to another such discovery or inspection (including the taking of copies) of documents as might be granted by a county court,

and may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

(2) Where a requirement has been imposed under paragraph (1) –

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.

(3) If a requirement under paragraph (1) is not complied with, the tribunal –

- (a) may make an order in respect of costs under rule 11(1); or
- (b) before or at the hearing, may strike out the whole or part of the notice of appeal,

but a tribunal shall not exercise its powers under this paragraph unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so, or the party has been given an opportunity to show cause orally why the powers conferred by this paragraph should not be exercised.

(4) Every document containing a requirement under paragraph (1)(b) or (c) shall contain a reference to the fact that, under Article 9(4) of the Industrial Tribunals Order, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

### **Time and place of hearing and appointment of assessor**

6.—(1) The President or the Vice-President shall fix the date, time and place of the hearing of the appeal and the Secretary shall not less than 14 days (or such shorter time as may be agreed by him with the parties) before the date so fixed send to each party a notice of hearing together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.

(2) Where the President or the Vice-President so directs, the Secretary shall also send notice of the hearing to such persons as may be directed, but the requirement as to the period of notice contained in paragraph (1) shall not apply to any such notice.

(3) The President or the Vice-President may, if he thinks fit, appoint in pursuance of Article 26(3) of the Order of 1978 a person or persons having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal as assessor or assessors.

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### **The hearing**

7.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with Article 6(1), (2) and (3) of the Industrial Tribunals Order.

(2) Subject to paragraph (3), any hearing of or in connection with an appeal shall take place in public.

(3) A tribunal may sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of –

- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision;
- (b) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Order of 1992, cause substantial injury to any undertaking of his or any undertaking in which he works.

(4) If a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the appeal, that party shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy to each other party.

(5) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Secretary less than 7 days before the hearing.

### **Procedure at hearing**

8.—(1) At any hearing of or in connection with an appeal a party shall be entitled to make an opening statement, to give evidence on his own behalf, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2) If a party shall fail to appear or to be represented at the time and place fixed for the hearing of an appeal, the tribunal may dispose of the appeal in the absence of that party or may adjourn the hearing to a later date; provided that before disposing of an appeal in the absence of a party the tribunal shall consider any written representations submitted by that party in pursuance of rule 7(4) or (5).

(3) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

### **Decision of tribunal**

9.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) The clerk shall transmit the document signed by the chairman to the Secretary who shall enter it in the Register and shall send a copy of the entry to each of the parties.

(4) The reasons for the decision shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs.

(5) The chairman of a tribunal shall have power by certificate to correct in the document recording the tribunal's decision clerical mistakes or errors arising therein from any accidental slip or omission.

(6) The clerk shall send a copy of any document corrected under paragraph (5) and the certificate of the chairman to the Secretary who shall as soon as practicable make such correction as may be

necessary in the Register and shall send a copy of the corrected entry or of the corrected reasons, as the case may be, to each of the parties.

- (7) If any decision is –
  - (a) corrected under paragraph (5);
  - (b) revoked or varied under rule 10; or
  - (c) altered in any way by order of a superior court,

the Secretary shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of any entry so altered to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court.

(8) Where this rule requires a document to be signed by the chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other members or member of the tribunal, who shall certify that the chairman is unable to sign.

### **Review of tribunal's decision**

10.—(1) Subject to the provisions of this rule, a tribunal shall have power, on the application of a party or of its own motion, to review any decision on the grounds that –

- (a) the decision was wrongly made as a result of an error on the part of the staff of the Office of the Tribunals;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (d) new evidence has become available since the making of the decision provided that its existence could not have been reasonably known of or foreseen; or
- (e) the interests of justice require such a review.

(2) A tribunal may not review a decision of its own motion unless it is the tribunal which issued the decision.

(3) A tribunal may only review a decision of its own motion if –

- (a) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review; and
- (b) such notice has been sent on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties.

(4) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.

(5) An application for the purposes of paragraph (1) may be refused by the President, the Vice-President or by the chairman of the tribunal which decided the case if in his opinion it has no reasonable prospect of success and he shall state the reasons for his opinion.

(6) If such an application is not refused under paragraph (5) it shall be heard by the tribunal which decided the case, or –

- (a) where it is not practicable for it to be heard by that tribunal; or
- (b) where the decision was made by a chairman acting alone under rule 12(4),

by a tribunal appointed by either the President or the Vice-President.

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(7) On reviewing its decision a tribunal may confirm the decision, or vary or revoke the decision; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

### **Costs**

11.—(1) A tribunal may make an order that a party shall pay to the other party either a specified sum being the sum agreed between them in respect of the costs of or in connection with an appeal incurred by that other party or, in default of agreement, the amount of those costs as assessed by way of detailed assessment.

(2) Any costs required by an order under this rule to be assessed by way of detailed assessment may be so assessed in accordance with such of the scales prescribed by county court rules for proceedings in the county court as shall be directed by the order.

### **Miscellaneous powers**

12.—(1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure.

(2) A tribunal may –

- (a) before granting an application under rule 5 or 10 require the party making the application to give notice thereof to the other party;
- (b) either on the application of any person or of its own motion, direct any other person to be joined as a party to the appeal (giving such consequential directions as it considers necessary), but may do so only after having given to the person proposed to be joined a reasonable opportunity of making written or oral objection;
- (c) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;
- (d) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;
- (e) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(3) A chairman may postpone the day or time fixed for, or adjourn, any hearing and vary any such postponement or adjournment.

(4) Any act required or authorised by these Rules to be done by a tribunal may be done by a chairman except –

- (a) the granting of an extension of time under rule 2(2);
- (b) the hearing of an appeal under rule 7;
- (c) an act required or authorised to be so done by rule 8 or 9 which the rule implies is to be done by the tribunal which is hearing or heard the appeal;
- (d) the hearing of an application under rule 10(1), and the variation or revocation of a decision, and ordering of a re-hearing, under rule 10(7).

### **Devolution issues**

13.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time –

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send each of the relevant authorities a copy of the notice of appeal.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

#### **Notices, etc.**

14.—(1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent through a document exchange in accordance with paragraph (5), by ordinary post (subject to paragraph (6)) or delivered to or at –

- (a) in the case of a notice or document directed to the Department in proceedings to which it is not a party, the offices of the Department for Employment and Learning at Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD, or such other office as may be notified by the Department;
- (b) in the case of a notice or document directed to the Attorney General for Northern Ireland pursuant to rule 13, the Attorney General’s Chambers, 9 Buckingham Gate, London SW1E 7JP;
- (c) in the case of a notice or document directed to a party –
  - (i) the address specified in his notice of appeal to which notices and documents are to be sent, or in a notice under paragraph (4); or
  - (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom or, if the party is a corporate body, the body’s registered or principal office in the United Kingdom, or, in any case, such address or place outside the United Kingdom as the President or the Vice-President may allow;
- (d) in the case of a document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the United Kingdom, or if such a person is a corporate body, the body’s registered or principal office in the United Kingdom,

and a notice or document sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party may at any time by notice to the Secretary and to the other party change the address to which notices and documents are to be sent.

(5) Where –

- (a) the proper address for service of any notice or document required or authorised by these Rules to be sent or given to any person includes a numbered box at a document exchange; or
- (b) there is inscribed on the writing paper of the party on whom the notice or document is to be served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the notice or document that he is unwilling to accept service through a document exchange,

service of the notice or document may be effected by leaving it addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any notice or document which is left at a document exchange in accordance

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with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(6) In any case he considers appropriate the President or the Vice-President may direct that there shall be substituted service in such manner as he may deem fit.

(7) In the case of an appeal to which the respondent is an inspector appointed otherwise than by the Health and Safety Executive for Northern Ireland, the Secretary shall send to that Executive copies of the notice of appeal and the document recording the decision of the tribunal on the appeal.

## SCHEDULE 6

Regulations 2(5), (6) and (10), 9, 10(6)(c)  
and 11(2)

### INDUSTRIAL TRIBUNALS (NON-DISCRIMINATION NOTICES APPEALS) RULES OF PROCEDURE

*For use only in proceedings on an appeal against a non-discrimination notice*

#### **Notice of appeal**

1.—(1) An appeal, as referred to in Article 68(1)(a) of the Order of 1976, Article 56(1)(a) of the Order of 1997 and paragraph 10(1) and (2)(a) of Schedule 1 to the Order of 2000, shall be commenced by the appellant sending to the Secretary a notice of appeal which shall be in writing and shall set out –

- (a) the name and address of the appellant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the appeal to be sent;
- (b) the date of the non-discrimination notice appealed against;
- (c) the name and address of the respondent;
- (d) particulars of the requirements appealed against; and
- (e) the grounds of the appeal.

#### **Duty of the Secretary upon receipt of notice of appeal**

2. Upon receiving a notice of appeal the Secretary shall –

- (a) enter the following details in the Register, namely –
  - (i) the case number;
  - (ii) the date the Secretary received the notice of appeal;
  - (iii) the name and address of the appellant;
  - (iv) the name and address of the respondent;
  - (v) the place where the appeal is to be held;
  - (vi) the fact that the appeal is an appeal against a non-discrimination notice under Article 68(1)(a) of the Order of 1976, Article 56(1)(a) of the Order of 1997 or paragraph 10(1) and (2)(a) of Schedule 1 to the Order of 2000, as the case may be;
- (b) send a copy of the notice of appeal to the respondent; and
- (c) inform the parties in writing of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent.

### **Power to require attendance of witnesses and production of documents, etc.**

3.—(1) A tribunal may on the application of a party made either by notice to the Secretary or at the hearing –

- (a) require a party to furnish in writing to the other party further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) require the attendance of any person in Northern Ireland, including a party, to give evidence or to produce any document or both;
- (c) require one party to grant to another such discovery or inspection (including the taking of copies) of documents as might be granted by a county court,

and may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

(2) Where a requirement has been imposed under paragraph (1) –

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.

(3) If a requirement under paragraph (1) is not complied with, the tribunal –

- (a) may make an order in respect of costs under rule 9(1); or
- (b) before or at the hearing, may strike out the whole or part of the notice of appeal,

but a tribunal shall not exercise its powers under this paragraph unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so, or the party has been given an opportunity to show cause orally why the powers conferred by this paragraph should not be exercised.

(4) Every document containing a requirement under paragraph (1)(b) or (c) shall contain a reference to the fact that, under Article 9(4) of the Industrial Tribunals Order, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

### **Time and place of hearing**

4.—(1) The President or the Vice-President shall fix the date, time and place of the hearing of the appeal and the Secretary shall not less than 14 days (or such shorter time as may be agreed by him with the parties) before the date so fixed send to each party a notice of hearing together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.

(2) Where the President or the Vice-President so directs, the Secretary shall also send notice of the hearing to such persons as may be directed, but the requirements as to the period of notice contained in paragraph (1) shall not apply to any such notice.

### **The hearing**

5.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with Article 6(1), (2) and (3) of the Industrial Tribunals Order.

(2) Subject to paragraph (3), any hearing of or in connection with an appeal shall take place in public.

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(3) A tribunal may sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of –

- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision;
- (b) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Order of 1992, cause substantial injury to any undertaking of his or any undertaking in which he works.

(4) If a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the appeal, that party shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy to each other party.

(5) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Secretary less than 7 days before the hearing.

#### **Procedure at hearing**

6.—(1) At any hearing of or in connection with an appeal a party shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2) If a party shall fail to appear or to be represented at the time and place fixed for the hearing of an appeal, the tribunal may dispose of the appeal in the absence of that party or may adjourn the hearing to a later date; provided that before disposing of an appeal in the absence of a party the tribunal shall consider any written representations submitted by that party in pursuance of rule 5(4) and (5).

(3) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

#### **Decision of tribunal**

7.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) The clerk shall transmit the document signed by the chairman to the Secretary who shall enter it in the Register and shall send a copy of the entry to each of the parties.

(4) The reasons for the decision shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs.

(5) In any appeal appearing to involve allegations of a sexual offence, the document referred to in paragraph (3) shall be entered on the Register with such deletions or amendments as have been made in accordance with rule 10(4).

(6) The chairman shall have power by certificate to correct in the document recording the tribunal's decision clerical mistakes or errors arising therein from any accidental slip or omission.

(7) The clerk shall send a copy of any document corrected under paragraph (6) and the certificate of the chairman to the Secretary who shall as soon as practicable make such corrections as may be necessary in the Register and shall send a copy of the corrected entry or of the corrected reasons, as the case may be, to each of the parties.

(8) If any decision is –



- (a) corrected under paragraph (6);
- (b) revoked or varied under rule 8; or
- (c) altered in any way by order of a superior court,

the Secretary shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court.

(9) Where this rule requires a document to be signed by the chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other members or member of the tribunal, who shall certify that the chairman is unable to sign.

### **Review of tribunal's decision**

8.—(1) Subject to the provisions of this rule, a tribunal shall have power, on the application of a party or of its own motion, to review any decision on the grounds that –

- (a) the decision was wrongly made as a result of an error on the part of the staff of the Office of the Tribunals;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (d) new evidence has become available since the making of the decision provided that its existence could not have been reasonably known of or foreseen; or
- (e) the interests of justice require such a review.

(2) A tribunal may not review a decision of its own motion unless it is the tribunal which issued the decision.

(3) A tribunal may only review a decision of its own motion if –

- (a) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review; and
- (b) such notice has been sent on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties.

(4) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.

(5) An application for the purposes of paragraph (1) may be refused by the President, the Vice-President or by the chairman of the tribunal which decided the case if in his opinion it has no reasonable prospect of success and he shall state the reasons for his opinion.

(6) If such an application is not refused under paragraph (5) it shall be heard by the tribunal which decided the case, or –

- (a) where it is not practicable for it to be heard by that tribunal; or
- (b) where the decision was made by a chairman acting alone under rule 10(5),

by a tribunal appointed by either the President or the Vice-President.

(7) On reviewing its decision a tribunal may confirm the decision, or vary or revoke the decision; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

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## **Costs**

9.—(1) A tribunal may make an order that a party shall pay to the other party either a specified sum being the sum agreed between them in respect of the costs of or in connection with an appeal incurred by that other party or, in default of agreement, the amount of those costs as assessed by way of detailed assessment.

(2) Any costs required by an order under this rule to be assessed by way of detailed assessment may be so assessed in the county court in accordance with such of the scales prescribed by county court rules for proceedings in the county court as shall be directed by the order.

## **Miscellaneous powers**

10.—(1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure.

(2) A tribunal may –

- (a) before granting an application under rule 3 or 8 require the party making the application to give notice thereof to the other party;
- (b) either on the application of any person or of its own motion, direct any other person to be joined as a party to the appeal (giving such consequential directions as it considers necessary), but may do so only after having given to the person proposed to be joined a reasonable opportunity of making written or oral objections;
- (c) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;
- (d) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;
- (e) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(3) A chairman may postpone the day or time fixed for, or adjourn, any hearing and vary any such postponement or adjournment.

(4) In any appeal appearing to involve allegations of the commission of a sexual offence, the tribunal or the Secretary shall omit from the Register, or delete from the Register or any decision, document or record of the proceedings, which is available to the public, any identifying matter which is likely to lead members of the public to identify any person affected by or making such an allegation.

(5) Any act required or authorised by these Rules to be done by a tribunal may be done by a chairman except –

- (a) the hearing of an appeal under rule 5;
- (b) an act required or authorised to be so done by rule 6 or 7 which the rule implies is to be done by the tribunal which is hearing or has heard the appeal;
- (c) the hearing of an application under rule 8(1), and the variation or revocation of a decision, and ordering of a re-hearing, under rule 8(7).

## **Restricted reporting orders**

11.—(1) In any appeal which involves allegations of sexual misconduct the tribunal may at any time before promulgation of its decision, either on the application of a party made by notice to the Secretary or of its own motion, make a restricted reporting order.

(2) The tribunal shall not make a restricted reporting order unless it has given each party an opportunity to advance oral argument at a hearing, if they so wish.

(3) Where a tribunal makes a restricted reporting order –

- (a) it shall specify in the order the persons who may not be identified;
  - (b) the order shall remain in force until the promulgation of the decision of the tribunal on the appeal to which it relates unless revoked earlier; and
  - (c) the Secretary shall ensure that a notice of that fact is displayed on the notice board of the tribunal with any list of the proceedings taking place before the industrial tribunal, and on the door of the room in which the proceedings affected by the order are taking place.
- (4) A tribunal may revoke a restricted reporting order at any time if it thinks fit.
- (5) For the purposes of this rule “promulgation” occurs on the date recorded as being the date on which the document recording the determination of the appeal was sent to the parties.

### **Devolution issues**

12.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time –

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send each of the relevant authorities a copy of the notice of appeal.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

### **Notices, etc.**

13.—(1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent through a document exchange in accordance with paragraph (5), by ordinary post (subject to paragraph (6)) or delivered to or at –

- (a) in the case of a notice or document directed to the Department in proceedings to which it is not a party, the offices of the Department for Employment and Learning at Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD, or such other office as may be notified by the Department;
- (b) in the case of a notice or document directed to the Attorney General for Northern Ireland pursuant to rule 12, the Attorney General’s Chambers, 9 Buckingham Gate, London SW1E 7JP;
- (c) in the case of a notice or document directed to a party –
  - (i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, or in a notice under paragraph (4); or
  - (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom or, if the party is a corporate body, the body’s registered or principal office in the United Kingdom, or, in any case, such address or place outside the United Kingdom as the President or the Vice-President may allow;
- (d) in the case of a notice or document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the United

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Kingdom or, if the person is a corporate body, the body's registered or principal office in the United Kingdom,

and a notice or document sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party may at any time by notice to the Secretary and to the other party change the address to which notices and documents are to be sent.

(5) Where –

- (a) the proper address for service of any notice or document required or authorised by these Rules to be sent or given to any person includes a numbered box at a document exchange; or
- (b) there is inscribed on the writing paper of the party on whom the notice or document is to be served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the notice or document that he is unwilling to accept service through a document exchange,

service of the notice or document may be effected by leaving it addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any notice or document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(6) In any case he considers appropriate the President or the Vice-President may direct that there shall be substituted service in such manner as he may deem fit.

## SCHEDULE 7

Regulation 14

### REVOCATIONS

(1) <i>Regulations revoked</i>	(2) <i>References</i>
Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 1996	<a href="#">S.R. 1996 No. 173.</a>
Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 1996	<a href="#">S.R. 1996 No. 466.</a>
Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2000	<a href="#">S.R. 2000 No. 261.</a>

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## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations revoke and replace the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 1996 (“the 1996 Regulations”) prescribing Rules of Procedure for Industrial Tribunals in Northern Ireland. In addition to minor and drafting amendments, re-numbering and the updating of statutory and other references, these Regulations make the following changes of substance.

Regulation 2 contains new provisions in paragraphs (6) to (10) setting out how time limits in the Regulations and in documents issued under them are to be calculated. Examples are given for interpretation of the general rules. Regulations 4 and 5 enable the President and the Vice-President of the Industrial Tribunals and the panel of tribunal chairmen to be persons legally qualified in any part of the United Kingdom. Regulations 6 and 7 are new and provide for the selection of panels of tribunal chairmen and members to hear national security cases and for modifications of Article 6 of the Industrial Tribunals (Northern Ireland) Order 1996 (“the Industrial Tribunals Order”) (composition of a tribunal) in such cases. Regulation 8 (composition of tribunals) provides that the tribunal is to be composed of a chairman and members taken from a panel of persons suitable to act in national security cases.

Regulation 9 is new and inserts an overriding objective to enable tribunals to deal with cases justly. Regulation 13 contains a transitional provision stating that the new regulations apply in respect of all cases, irrespective of when they were commenced. Regulation 14 revokes the Regulations listed in Schedule 7, namely the 1996 Regulations and the Regulations which amended them.

Schedule 1 contains the rules of procedure which apply to all industrial tribunal proceedings in the absence of other provision. Rules 1 and 3 make it clear that more than one originating application or notice of appearance may be presented in a single document.

Rule 4 of Schedule 1 is a consolidation and simplification of rules 4 and 16 of Schedule 1 to the 1996 Regulations, now headed “case management”. Paragraph (3) is new and provides that directions may relate in particular to evidence, including witness statements. Failure to comply with a direction may now lead to the penalties in paragraph (8). In rule 7(4) of Schedule 1 (pre-hearing review), the maximum amount of the deposit which may be imposed following a pre-hearing review has been increased from £150 to £500. Rule 8 of Schedule 1 is new and contains the powers which are available to the Minister of the Crown or the tribunal in national security cases to direct or order that the tribunal sit in private, that the applicant or his representative be excluded or that witnesses' identities be concealed. Where one of those powers is exercised, or where the Minister addresses the tribunal with a view to it exercising one of the powers, the modifications to Schedule 1 set out in Schedule 2 apply. Rule 8 also imposes a general duty on the tribunal concerning disclosure of information contrary to the interests of national security. Rule 9 of Schedule 1 is new and provides that tribunal proceedings for unfair dismissal may be adjourned pending the outcome of interlocutory civil proceedings under Article 97 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 not actionable in tort.

Rule 14(1) of Schedule 1 (costs) is amended to make it clear that the unreasonable behaviour of a party's representative may be taken into account when awarding costs against that party. The tribunal is also now under a duty to consider an award of costs in the circumstances described in rule 14(1), and these include circumstances where proceedings which have no reasonable prospect of success have been pursued. In rule 14(3), the maximum amount of costs which a tribunal may award without an assessment of costs is increased from £500 to £10,000. In rule 15(2) of Schedule 1

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(miscellaneous powers), in sub-paragraphs (c) and (d) respectively, the term “frivolous” has been replaced with “misconceived” (defined in regulation 2(2)) and “unreasonable”. Those paragraphs permit the tribunal to strike out applications or notices of appearance in certain circumstances.

Rule 18 of Schedule 1 is new and provides for the Secretary of the Office of the Industrial Tribunals and the Fair Employment Tribunal to give notice to certain persons, including the Attorney General for Northern Ireland, in any proceedings in which a devolution issue arises. Rule 22 (notices, etc.) provides for the service of notices.

Schedule 2 is new and contains the modifications and insertions which apply to Schedule 1 when a power under rule 8(1), (2) or (3) of Schedule 1 is exercised (national security). It provides for the Attorney General to appoint a special advocate to represent the applicant’s interests in the event of his, or his representative’s exclusion (rule 7A). Provision is also made for dealing with the reasons for the tribunal’s decision in national security cases (rule 7B).

Part I of Schedule 3 contains modifications of the rules in Schedule 1 which apply in equal value cases. Only those paragraphs of the modified rules which are different from those in Schedule 1 are now specified in Schedule 3. In cases involving an equal value claim and in which a power under rule 8(1), (2) or (3) of Schedule 1 is exercised, the rules in Schedule 1 are modified in accordance with both Schedule 2 and Part I of Schedule 3, but they are subject to the modifications in Part II of Schedule 3.

The rules for use in proceedings involving appeals against the imposition of industrial levy notices issued under the Industrial Training (Northern Ireland) Order 1984 are now in Schedule 4. The rules for use in proceedings involving appeals against improvement or prohibition notices issued under the Health and Safety at Work etc. (Northern Ireland) Order 1978 are now in Schedule 5. The rules for use in proceedings involving appeals against non-discrimination notices issued under the Sex Discrimination (Northern Ireland) Order 1976 and the Race Relations (Northern Ireland) Order 1997 and appeals against such notices issued by the Equality Commission under the Equality (Disability, etc.) (Northern Ireland) Order 2000 are now in Schedule 6.

Schedule 7 sets out the Regulations which are revoked and replaced by these Regulations.