

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.

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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.

(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)(1) 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

(1) 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)

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- (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 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 –

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- (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.

(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.

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(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 B1 29 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.