

**2005 No. 150**

**EMPLOYMENT**

**The Industrial Tribunals (Constitution and Rules of  
Procedure) Regulations (Northern Ireland) 2005**

*Made* - - - - - *22nd March 2005*

*Coming into operation* *3rd April 2005*

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The Department for Employment and Learning(a), in exercise of the powers conferred on it by Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978(b), Articles 3(1), 6(6)(c) and (6A)(d), 9(1), (2), (3)(e), (3ZA)(f), (3A)(g) and (5), 9A(1) and (2)(h), 11(1)(i), (2) and (4), 12(2), (5), (6) and (7), 12A(1)(j), 13(1), 14(2), 15(1), (1A), (1B), (1C)(k) and (2), 15A(l), 21(m) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(n), and now vested in it(o), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

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- (a) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)
- (b) S.I. 1978/1039 (N.I. 9); Article 26 was modified by S.I. 1984/1159 (N.I. 9), Schedule 4; its interpretation was modified by S.R. 2000 No. 87, regulation 2; S.R. 2000 No. 120, regulation 19; and 2002 c. 8 (N.I.), s. 1
- (c) Article 6(6) was amended by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 16(3)
- (d) Article 6A was inserted by S.I. 1998/1265 (N.I. 8), Article 4(5)
- (e) Article 9(3)(f) was modified by S.I. 2003/2902 (N.I. 15), Article 3(1)
- (f) Article 9(3ZA) was inserted by S.I. 2003/2902 (N.I. 15), Article 4
- (g) Article 9(3A) was modified by S.I. 2003/2902 (N.I. 15), Article 5
- (h) Article 9A was inserted by S.I. 2003/2902 (N.I. 15), Article 6
- (i) Article 11(1)(a) was amended by S.I. 2003/2902 (N.I. 15), Article 7(2)
- (j) Article 12 was substituted and Article 12A inserted by S.I. 1999/2790 (N.I. 9), Schedule 8, paragraph 3
- (k) Article 15(1) was substituted by and Article 15(1A), (1B) and (1C) inserted by S.I. 2003/2902 (N.I. 15), Article 8(1)
- (l) Article 15A was inserted by S.I. 2003/2902 (N.I. 15), Article 8(2)
- (m) Article 21 was modified by S.I. 2003/2902 (N.I. 15), Article 3(3) and (4), paragraph 3 of Schedule 5 and Schedule 6
- (n) S.I. 1996/1921 (N.I. 18)
- (o) *See* S.R. 1999 No. 481

## **Citation, commencement and revocation**

1.—(1) These Regulations may be cited as the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 and the Rules of Procedure contained in Schedules 1, 2, 3, 4, 5 and 6 to these Regulations may be referred to, respectively as –

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

(2) These Regulations shall come into operation on 3rd April 2005.

(3) Subject to the savings in regulation 15, the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004(a) and the Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2004(b) are revoked.

## **Interpretation**

2.—(1) In these Regulations and in Schedules 1, 2, 3, 4, 5 and 6 –

“the Sex Discrimination Order” means the Sex Discrimination (Northern Ireland) Order 1976(c);

“the Disability Discrimination Act” means the Disability Discrimination Act 1995(d);

“the Industrial Tribunals Order” means the Industrial Tribunals (Northern Ireland) Order 1996(e);

“the Race Relations Order” means the Race Relations (Northern Ireland) Order 1997(f);

“the Employment Order” means the Employment (Northern Ireland) Order 2003(g);

“the Sexual Orientation Regulations” means the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003(h);

“allowances” means any allowances payable under Article 7(2)(c) or (3) of the Industrial Tribunals Order;

“chairman” means the President, the Vice-President or a member of the panel of chairmen appointed in accordance with regulation 4(1)(a), or, for the purposes of national security proceedings, a member of the panel referred to in regulation 6 selected in accordance with regulation 7(a), and in relation to particular proceedings it means the chairman to whom the proceedings have been referred by the President or the Vice-President;

“compromise agreement” means an agreement to refrain from continuing proceedings where the agreement meets the conditions in Article 245(3)(i) of the Employment Rights Order;

“constructive dismissal” has the meaning set out in Article 127(1)(c) of the Employment Rights Order;

“decision” includes a default judgement except when referred to in rules 34 to 36 of Schedule 1;

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(a) S.R. 2004 No. 165

(b) S.R. 2004 No. 317

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

(d) 1995 c. 50

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

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

(g) S.I. 2003/2902 (N.I. 15)

(h) S.R. 2003 No. 497

(i) Article 245(3) was amended by S.I. 1998/1265 (N.I. 8), Articles 10(2)(d), 11(2)(d) and Schedule 1, paragraph 15(1)

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

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000<sup>(a)</sup>;

“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 the Secretary of State under rule 54(1)(b) or (c) of Schedule 1; or
- (b) an order of the tribunal under rule 54(2)(a) read with 54(1)(b) or (c) of Schedule 1;

“hearing” means a case management discussion under rule 17, a pre-hearing review under rule 18, a hearing under rule 26 or a review hearing under rule 33 or 36 (in each case as mentioned in Schedule 1) or a sitting of a chairman or a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawful to enable the chairman or tribunal to reach a decision on any question;

“legally represented” has the meaning set out in rule 38(5) of Schedule 1;

“misconceived” includes having no reasonable prospect of success;

“national security proceedings” means proceedings in relation to which a direction is given under rule 54(1) of Schedule 1, or an order is made under rule 54(2) of that Schedule;

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

“old Regulations” means the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004;

“order” means an order, which may be issued in relation to interim matters, which may require a person to do or not to do something;

“panel of chairmen” means a panel referred to in regulation 4(1)(a);

“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>(b)</sup> to discharge for the time being the functions of the President;

“Register” means the Register of claims, appeals, applications, decisions and written reasons kept in accordance with regulation 13;

“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;

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

“special advocate” means a person appointed in accordance with rule 8 of Schedule 2;

“tribunal” means an industrial tribunal and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President or the Vice-President;

“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 for the time being the functions of the Vice-President;

“writing” includes writing delivered by means of electronic communication.

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

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(a) 2000 c. 7

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

“the Equal Pay Act” means the Equal Pay Act (Northern Ireland) 1970(a);

“comparator” means the person of the opposite sex to the claimant in relation to whom the claimant claims that his work is of equal value as described in section 1(2)(c) of the Equal Pay Act(b);

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

“the facts relating to the question” has the meaning in rule 6(3) of Schedule 3;

“independent expert” means a member of the panel of independent experts within the meaning of section 2A(4) of the Equal Pay Act(c);

“indicative timetable” means the indicative timetable set out in the Annex to Schedule 3;

“the question” means whether the claimant’s work is of equal value to that of the comparator as described in section 1(2)(c) of the Equal Pay Act;

“report” means a report required by a tribunal or chairman to be prepared by an expert, pursuant to section 2A(1)(b) of the Equal Pay Act.

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

“the Industrial Training Order” means the Industrial Training (Northern Ireland) Order 1984(d);

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

“levy” means a levy imposed under Article 23 of the Industrial Training Order;

“levy appeal” means an appeal against an assessment to a levy;

“respondent” means the Board.

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

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

“improvement notice” means a notice under Article 23 of the Health and Safety Order;

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

“prohibition notice” means a notice under Article 24 of the Health and Safety Order;

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

“appeal”, unless the context requires otherwise, means an appeal referred to in Article 68(1)(a) of the Sex Discrimination Order, in Article 56(1)(a) of the Race Relations Order or, as the case may be, in paragraph 10(1) and (2)(a) of Schedule 1 to the Disability Order;

“non-discrimination notice” means a notice under Article 67 of the Sex Discrimination Order, under Article 55 of the Race Relations Order or, as the case may be, under Article 6 of the Disability Order;

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(a) 1970 c. 32 (N.I.) as amended by S.R. 1984 No. 16 and S.R. 2005 No. 145

(b) Section 1(2)(c) was inserted by S.R. 1984 No. 16, regulation 2(1)

(c) Section 2A was inserted by S.R. 1984 No. 16, regulation 3 and amended by S.R. 1996 No. 465, regulation 2 and S.R. 2005 No. 145, regulation 2

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

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

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

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



“respondent” means the Equality Commission for Northern Ireland established under section 73 of the Northern Ireland Act 1998<sup>(a)</sup>.

### **Overriding objective**

3.—(1) The overriding objective of these Regulations and the rules in Schedules 1, 2, 3, 4, 5 and 6 is to enable tribunals and chairmen 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) dealing with the case in ways which are proportionate to the complexity or importance of the issues;
- (c) ensuring that it is dealt with expeditiously and fairly; and
- (d) saving expense.

(3) A tribunal or chairman shall seek to give effect to the overriding objective when it or he –

- (a) exercises any power given to it or him by these Regulations or the rules in Schedules 1, 2, 3, 4, 5 and 6; or
  - (b) interprets these Regulations or any rule in Schedules 1, 2, 3, 4, 5 and 6.
- (4) The parties shall assist the tribunal or the chairman to further the overriding objective.

### **Panels of members of tribunals – general**

4.—(1) There shall be three panels of members of industrial tribunals, namely –

- (a) a panel of full-time and part-time chairmen appointed by the Department consisting of persons –
  - (i) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(b)</sup>;
  - (ii) being an advocate or solicitor admitted in Scotland of at least seven 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 seven 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.

(3) The President or the Vice-President may establish further specialist panels of chairmen and persons referred to in paragraph (1)(b) and (c) and may select persons from such specialist panels in order to deal with proceedings in which particular specialist knowledge would be beneficial.

### **Composition of tribunals – general**

5.—(1) For each hearing, the President or the Vice-President shall select a chairman, who shall, subject to regulation 7, be the President, the Vice-President or a member of the panel of chairmen, and the President or the Vice-President may select himself.

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(a) 1998 c. 47

(b) 1990 c. 41

(2) In any proceedings which are to be determined by a tribunal comprising a chairman and two other members, the President or the Vice-President shall, subject to regulation 7, select one of those other members from the panel of persons appointed by the Department under regulation 4(1)(b) and the other from the panel of persons appointed under regulation 4(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, regulation 7(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.

(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 or chairman.

#### **Panels of members of tribunals – national security proceedings**

**6.** In relation to national security proceedings, 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 4(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 4(1)(c) as persons suitable to act as members in such cases.

#### **Composition of tribunals – national security proceedings**

**7.** In relation to national security proceedings –

- (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 and two other members, the President or the Vice-President shall select one of those other members from the panel selected in accordance with regulation 6(b)(i) and the other from the panel selected in accordance with regulation 6(b)(ii).

#### **Modification of Article 6 of the Industrial Tribunals Order (national security proceedings)**

**8.—(1)** For the purposes of national security proceedings Article 6(a) of the Industrial Tribunals Order shall be modified in accordance with 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 regulation 7(a) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005”.

(3) In Article 6(1)(b), for the words “in accordance with regulations so made” substitute the words “in accordance with regulation 7(b) 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) 2005”.

#### **Practice directions**

**9.—(1)** The President may make practice directions about the procedure of industrial tribunals, including practice directions about the exercise by tribunals or chairmen of powers under these Regulations.

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(a) Article 6(1) was modified by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 16(2)

(2) The power of the President to make practice directions under paragraph (1) includes power –

- (a) to vary or revoke practice directions;
- (b) to make different provision for different cases, including different provision for specific types of proceedings.

(3) The President shall publish a practice direction made under paragraph (1), and any revocation or variation of it, in such manner as he considers appropriate for bringing it to the attention of the persons to whom it is addressed.

### **Power to prescribe**

**10.**—(1) The Department may prescribe –

- (a) one or more versions of a form, one of which shall be used by all claimants for the purpose of instituting proceedings in an industrial tribunal (“claim form”) except any claim or proceedings listed in paragraph (3);
- (b) one or more versions of a form, one of which shall be used by all respondents to a claim for the purpose of responding to a claim before an industrial tribunal (“response form”) except respondents to a claim or proceedings listed in paragraph (3); and
- (c) that the provision of certain information and answering of certain questions in a claim form or in a response form is mandatory in all proceedings save those listed in paragraph (3).

(2) The Department shall publish the forms and matters prescribed pursuant to paragraph (1) in such manner as it considers appropriate in order to bring them to the attention of potential claimants, respondents and their advisers.

(3) The proceedings referred to in paragraph (1) are –

- (a) those referred to an industrial tribunal by a court;
- (b) proceedings to which any of Schedules 4 to 6 apply or;
- (c) proceedings brought under any of the following statutory provisions –
  - (i) sections 19, 20 or 22 of the National Minimum Wage Act 1998(a);
  - (ii) Article 43 of the Employment Rights Order where the proceedings are brought by the employer.

### **Calculation of time limits**

**11.**—(1) 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 or order of a tribunal or a chairman, shall be calculated in accordance with paragraphs (2) to (6).

(2) 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 is sent a copy of a claim on 1st May. He must present a response to the Office of the Tribunals within 28 days of the date on which he was sent the copy. The last day for presentation of the response is 29th May.

(3) 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 a hearing, he must submit them not less than 7 days before the hearing. If the hearing is fixed for 8th May, the representations must be submitted no later than 1st May.

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

(5) In rule 14(4) of Schedule 1 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 been effected not less than 14 days before the hearing date, but

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(a) 1998 c. 39; Sub-ss 19(2A) and (2B) were inserted by 2003 c. 8, s. 1

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 May. The last day on which the notice may be placed in the post is 1st May.

(6) Where any act must or may have been done within a certain number of days of a document being sent to a person by the Secretary, the date when the document was sent shall, unless the contrary is proved, be regarded as the date on the letter from the Secretary which accompanied the document. For example, a respondent must present his response to a claim to the Office of the Tribunals within 28 days of the date on which he was sent a copy of the claim. If the letter from the Secretary sending him a copy of the claim is dated 1st May, the last day for presentation of the response is 29th May.

### **Application of Schedules 1-6 to proceedings**

**12.**—(1) Subject to paragraphs (2) and (3), the rules in Schedule 1 shall apply in relation to all proceedings before an industrial tribunal except where separate rules of procedure made under the provisions of any statutory provision are applicable.

(2) In proceedings to which the rules in Schedule 1 apply and in which any power conferred on the Secretary of State, the tribunal or a chairman by rule 54 (national security proceedings) of Schedule 1 is exercised, Schedule 1 shall be modified in accordance with Schedule 2.

(3) The rules in Schedules 3, 4, 5 and 6 shall apply to modify the rules in Schedule 1 in relation to proceedings before a tribunal which consist, respectively, of –

- (a) an equal value claim (as defined in regulation 2(2));
- (b) an appeal by a person assessed to levy imposed under a levy order made under Article 23 of the Industrial Training Order;
- (c) an appeal against an improvement or prohibition notice under Article 26 of the Health and Safety Order<sup>(a)</sup>; and
- (d) an appeal against a non-discrimination notice under Article 67 of the Sex Discrimination Order, Article 55 of the Race Relations Order or paragraph 10 of Schedule 1 to the Equality (Disability, etc.) (Northern Ireland) Order 2000.

### **Register**

**13.**—(1) The Secretary shall maintain a Register which shall be open to inspection by any person without charge at all reasonable hours.

- (2) The Register shall contain –
  - (a) details of all claims in accordance with rule 2(2)(g) of Schedule 1;
  - (b) details of appeals in accordance with rule 6(a) of Schedule 4, rule 4(a) of Schedule 5 and rule 3(a) of Schedule 6;
  - (c) the fact of applications in accordance with rule 5 of Schedule 5; and
  - (d) a copy of all decisions and any written reasons issued by any tribunal or chairman which are required to be entered in the Register in accordance with the rules in Schedules 1 to 6.
- (3) The Register, or any part of it, may be kept by means of a computer.

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

**14.** 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.

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(a) Interpretation of Part II of the Order was modified by S.R. 2000 No. 87, regulation 2; S.R. 2000 No. 120, regulation 19; and 2002 c. 8 (N.I.), s. 1

## **Transitional provisions**

**15.**—(1) These Regulations and Schedules 1 to 6 shall apply in relation to all proceedings where those proceedings were commenced on or after 3rd April 2005.

(2) These Regulations and Schedules 1 and 2 (with the exception of rules 1 to 3 and 38 to 48 of Schedule 1) shall apply to proceedings –

- (a) which were commenced prior to 3rd April 2005; and
- (b) to which Schedule 1 to the old Regulations applied;

provided that a copy of the originating application was not sent to the respondent prior to 3rd April 2005.

(3) In relation to the proceedings described in paragraph (2), the following provisions of Schedule 1 to the old Regulations shall continue to apply –

- (a) rule 1 (originating application);
- (b) rule 2 (action upon receipt of originating application) with the exception of paragraphs (2), (4) and (5) of that rule; and
- (c) rule 14 (costs).

(4) In relation to proceedings described in paragraph (2) but where a copy of the originating application was sent to the respondent prior to 3rd April 2005, Schedules 1 and 2 to these Regulations shall apply with the exception of rules 1 to 9, 21 to 24, 33 and 38 to 48 of Schedule 1 and rules 2 to 5 of Schedule 2.

(5) In relation to proceedings described in paragraph (4), the following provisions of the old Regulations shall continue to apply –

- (a) in Schedule 1 –
  - (i) rule 1 (originating application);
  - (ii) rule 2 (action upon receipt of originating application) with the exception of paragraphs (2), (4) and (5) of that rule;
  - (iii) rule 3 (appearance by respondent);
  - (iv) rule 8 (national security);
  - (v) rule 14 (costs); and
- (b) rule 1 of Schedule 2.

(6) In relation to proceedings –

- (a) which were commenced prior to 3rd April 2005;
- (b) to which Schedule 3 to the old Regulations applied; and
- (c) in which the tribunal has not, prior to 3rd April 2005, required a member of the panel of independent experts to prepare a report under section 2A(1)(b) of the Equal Pay Act;

these Regulations and rules 1 to 12 of Schedule 3, with the exception of rule 3(3)(a), shall apply.

(7) In relation to proceedings –

- (a) which were commenced prior to 3rd April 2005;
- (b) to which Schedule 3 to the old Regulations applied; and
- (c) in which the tribunal has, prior to 3rd April 2005, required a member of the panel of independent experts to prepare a report under section 2A(1)(b) of the Equal Pay Act;

Schedule 3 to the old Regulations shall continue to apply.

(8) In relation to proceedings described in paragraph (7), the following rules of Schedule 3 shall also apply and shall take precedence over any conflicting provision in Schedule 3 to the old Regulations, namely rules 2, 10(2), 10(4), 11, 12(1) and 12(3).

(9) Rule 13 of Schedule 3 shall apply to all proceedings to which, in accordance with this regulation, rule 10 of Schedule 2 applies.

(10) In relation to proceedings commenced prior to 3rd April 2005 and to which Schedule 4, 5 or 6 to the old Regulations applied, the provisions of those schedules shall continue to apply to such proceedings.

Sealed with the Official Seal of the Department for Employment and Learning on 22nd March 2005.

(L.S.)

*T. Devine*

A senior officer of the Department for Employment and Learning

## INDUSTRIAL TRIBUNAL RULES OF PROCEDURE

*How to bring a claim***Starting a claim**

1.—(1) A claim shall be brought before an industrial tribunal by the claimant presenting to the Office of the Tribunals the details of the claim in writing. Those details must include all the relevant required information (subject to paragraph (5) and rule 53).

(2) Subject to paragraph (3), unless it is a claim in proceedings described in regulation 10(3), a claim which is presented on or after 1st October 2005 must be presented on a claim form which has been prescribed by the Department in accordance with regulation 10.

(3) Where a claim described in paragraph (2) has not been presented using the prescribed form but the Secretary is satisfied that –

- (a) the information provided in the claim is substantially the same as the information which would have been provided had the prescribed form been used; and
- (b) the form in which the claim is presented is not calculated to mislead,

that claim shall be taken to have been presented on a claim form prescribed by the Department in accordance with regulation 10.

(4) Subject to paragraph (5) and to rule 53, the required information in relation to the claim is –

- (a) each claimant's name;
- (b) each claimant's gender;
- (c) each claimant's date of birth;
- (d) each claimant's address;
- (e) the name of each person against whom the claim is made ("the respondent");
- (f) each respondent's address;
- (g) details of the claim;
- (h) whether or not the claimant is or was an employee of the respondent;
- (i) whether or not the claim includes a complaint that the respondent has dismissed the claimant or has contemplated doing so;
- (j) whether or not the claimant has raised the subject matter of the claim with the respondent in writing at least 28 days prior to presenting the claim to the Office of the Tribunals; and
- (k) if the claimant has not done as described in sub-paragraph (j), why he has not done so.

(5) In the following circumstances the required information identified below is not required to be provided in relation to that claim –

- (a) if the claimant is not or was not an employee of the respondent, the information in paragraph (4)(i) to (k) is not required;
- (b) if the claimant was an employee of the respondent and the claim consists only of a complaint that the respondent has dismissed the claimant or has contemplated doing so, the information in paragraph (4)(j) and (k) is not required;
- (c) if the claimant was an employee of the respondent and the claim does not relate to the claimant being dismissed or a contemplated dismissal by the respondent, and the claimant has raised the subject matter of the claim with the respondent as described in paragraph (4)(h), the information in paragraph (4)(k) is not required.

(6) References in this rule to being dismissed or a dismissal by the respondent do not include references to constructive dismissal.

(7) Two or more claimants may present their claims in the same document if their claims arise out of the same set of facts.

(8) When Article 19 of the Employment Order applies to the claim or part of one and a chairman considers in accordance with paragraph (6) of Article 19 that there has been a breach of paragraphs (2) to (4) of that Article, neither a chairman nor a tribunal shall consider the substance of the claim (or the relevant part of it) until such time as those paragraphs have been complied with in relation to the claim or the relevant part of it.

### *Acceptance of claim procedure*

#### **What the tribunal does after receiving the claim**

2.—(1) On receiving the claim the Secretary shall consider whether the claim or part of it should be accepted in accordance with rule 3. If a claim or part of one is not accepted the tribunal shall not proceed to deal with any part which has not been accepted (unless it is accepted at a later date). If no part of a claim is accepted the claim shall not be copied to the respondent.

- (2) If the Secretary accepts the claim or part of it, he shall –
- (a) send a copy of the claim to each respondent and record in writing the date on which it was sent;
  - (b) inform the parties in writing of the case number of the claim (which must from then on be referred to in all correspondence relating to the claim) and the address to which notices and other communications to the Office of the Tribunals must be sent;
  - (c) inform the respondent in writing about how to present a response to the claim, the time limit for doing so, what may happen if a response is not entered within the time limit and that the respondent has a right to receive a copy of any decision disposing of the claim;
  - (d) when any statutory provision relevant to the claim provides for conciliation, notify the parties that the services of a conciliation officer are available to them;
  - (e) when rule 22 (fixed period for conciliation) applies, notify the parties of the date on which the Agency's duty to conciliate ends and that after that date the services of a conciliation officer shall be available to them only if the Agency chooses to exercise its power to continue to conciliate;
  - (f) if only part of the claim has been accepted, inform the claimant and any respondent which parts of the claim have not been accepted and that the tribunal shall not proceed to deal with those parts unless they are accepted at a later date;
  - (g) enter the following details of the claim in the Register (subject to rule 49) –
    - (i) the case number;
    - (ii) the date the Secretary received the claim (on this occasion);
    - (iii) the name of each claimant;
    - (iv) the name of each respondent;
    - (v) the type of claim brought in general terms without reference to detail.

#### **When the claim will not be accepted by the Secretary**

3.—(1) The Secretary shall not accept or register the claim (or a relevant part of it) if it is clear to him that one or more of the following circumstances applies –

- (a) the claim does not include all the relevant required information;
- (b) the tribunal does not have power to consider the claim (or that relevant part of it); or
- (c) Article 19 of the Employment Order (complaints about grievances: industrial tribunals) applies to the claim or part of it and the claim has been presented to the tribunal in breach of paragraphs (2) to (4) of that Article,

(2) If the Secretary decides not to accept a claim or part of one for any of the reasons in paragraph (1), he shall refer the claim together with a statement of his reasons for not accepting it to a chairman. The chairman shall decide in accordance with the criteria in paragraph (1) whether the claim or part of it should be accepted and allowed to proceed.

(3) If the chairman decides that the claim or part of it should be accepted he shall inform the Secretary in writing and the Secretary shall accept the relevant part of the claim and then proceed to deal with it in accordance with rule 2(2).

(4) If the chairman decides that the claim or part of it should not be accepted he shall record his decision together with the reasons for it in writing in a document signed by him. The Secretary shall as soon as is reasonably practicable inform the claimant of that decision and the reasons for it in writing together with information on how that decision may be reviewed or appealed.

(5) Where a claim or part of one has been presented to the tribunal in breach of paragraphs (2) to (4) of Article 19 of the Employment Order, the Secretary shall notify the claimant of the time limit which applies to the claim or the part of it concerned and shall inform the claimant of the consequences of not complying with Article 19 of that Order.

(6) Except for the purposes of paragraphs (5) and (7) or any appeal, where a chairman has decided that a claim or part of one should not be accepted such a claim (or the relevant part of it) is to be treated as if it had not been received by the Secretary on that occasion.



(7) Any decision by a chairman not to accept a claim or part of one may be reviewed in accordance with rules 34 to 36. If the result of such review is that any parts of the claim should have been accepted, then paragraph (6) shall not apply to the relevant parts of that claim and the Secretary shall then accept such parts and proceed to deal with it in accordance with rule 2(2).

(8) A decision to accept or not to accept a claim or part of one shall not bind any future tribunal or chairman where any of the issues listed in paragraph (1) fall to be determined later in the proceedings.

(9) Except in rule 34 (review of other decisions), all references to a claim in the remainder of these Rules are to be read as references to only the part of the claim which has been accepted.

### *Response*

#### **Responding to the claim**

4.—(1) If the respondent wishes to respond to the claim made against him he must present his response to the Office of the Tribunals within 28 days of the date on which he was sent a copy of the claim. The response must include all the relevant required information. The time limit for the respondent to present his response may be extended in accordance with paragraph (5).

(2) Subject to paragraph (3), unless it is a response in proceedings described in regulation 10(3), any response presented on or after 1st October 2005 must be on a response form prescribed by the Department pursuant to regulation 10.

(3) Where a response described in paragraph (2) has not been presented using the prescribed form but the Secretary is satisfied that –

- (a) the information provided in the response is substantially the same as the information which would have been provided had the prescribed form been used; and
- (b) the form in which the response is presented is not calculated to mislead,

that response shall be taken to have been presented on a response form prescribed by the Department in accordance with regulation 10.

(4) The required information in relation to the response is –

- (a) each respondent's name;
- (b) each respondent's address;
- (c) whether or not the respondent wishes to resist the claim in whole or in part; and
- (d) if the respondent wishes to so resist, on what grounds.

(5) The respondent may apply under rule 11 for an extension of the time limit within which he is to present his response. The application must be presented to the Office of the Tribunals within 28 days of the date on which the respondent was sent a copy of the claim (unless the application is made under rule 33(1)) and must explain why the respondent cannot comply with the time limit. Subject to rule 33, the chairman shall only extend the time within which a response may be presented if he is satisfied that it is just and equitable to do so.

(6) A single document may include the response to more than one claim if the relief claimed arises out of the same set of facts, provided that in respect of each of the claims to which the single response relates –

- (a) the respondent intends to resist all the claims and the grounds for doing so are the same in relation to each claim; or
- (b) the respondent does not intend to resist any of the claims.

(7) A single document may include the response of more than one respondent to a single claim provided that –

- (a) each respondent intends to resist the claim and the grounds for doing so are the same for each respondent; or
- (b) none of the respondents intends to resist the claim.

### *Acceptance of response procedure*

#### **What the tribunal does after receiving the response**

5.—(1) On receiving the response the Secretary shall consider whether the response should be accepted in accordance with rule 6. If the response is not accepted it shall be returned to the respondent and (subject to paragraphs (4) and (5) of rule 6) the claim shall be dealt with as if no response to the claim had been presented.

(2) If the Secretary accepts the response he shall send a copy of it to all other parties and record in writing the date on which he does so.

### **When the response will not be accepted by the Secretary**

6.—(1) The Secretary shall not accept the response if it is clear to him that any of the following circumstances apply –

- (a) the response does not include all the required information (defined in rule 4(4)); or
- (b) the response has not been presented within the relevant time limit.

(2) If the Secretary decides not to accept a response for either of the reasons in paragraph (1), he shall refer the response together with a statement of his reasons for not accepting the response to a chairman. The chairman shall decide in accordance with the criteria in paragraph (1) whether the response should be accepted.

(3) If the chairman decides that the response should be accepted he shall inform the Secretary in writing and the Secretary shall accept the response and then deal with it in accordance with rule 5(2).

(4) If the chairman decides that the response should not be accepted he shall record his decision together with the reasons for it in writing in a document signed by him. The Secretary shall inform both the claimant and the respondent of that decision and the reasons for it. The Secretary shall also inform the respondent of the consequences for the respondent of that decision and how it may be reviewed or appealed.

(5) Any decision by a chairman not to accept a response may be reviewed in accordance with rules 34 to 36. If the result of such a review is that the response should have been accepted, then the Secretary shall accept the response and proceed to deal with the response as described in rule 5(2).

### **Counterclaims**

7.—(1) When a respondent wishes to present a claim against the claimant (“a counterclaim”) in accordance with Article 4 of the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994<sup>(a)</sup> he must present the details of his counterclaim to the Office of the Tribunals in writing. Those details must include –

- (a) the respondent’s name;
- (b) the respondent’s address;
- (c) the name of each claimant whom the counterclaim is made against;
- (d) each claimant’s address;
- (e) details of the counterclaim.

(2) A chairman may in relation to particular proceedings by order made under rule 10(1) establish the procedure which shall be followed by the respondent making the counterclaim and any claimant responding to the counterclaim.

(3) The President may by a practice direction made under regulation 9 make provision for the procedure which is to apply to counterclaims generally.

### *Consequences of a response not being presented or accepted*

### **Default judgements**

8.—(1) In any proceedings if the relevant time limit for presenting a response has passed, a chairman may, in the circumstances listed in paragraph (2), issue a default judgement to determine the claim without a hearing under rule 26 if he considers it appropriate to do so.

- (2) Those circumstances are when –
- (a) no response in those proceedings has been presented to the Office of the Tribunals within the relevant time limit;
  - (b) a response has been so presented, but a decision has been made not to accept the response either by the Secretary under rule 6(1) or by a chairman under rule 6(2), and the Office of the Tribunals has not received an application under rule 34 to have that decision reviewed; or
  - (c) a response has been accepted in those proceedings, but the respondent has stated in the response that he does not intend to resist the claim.

(3) A default judgement may determine liability only or it may determine liability and remedy. If a default judgement determines remedy it shall be such remedy as it appears to the chairman that the claimant is entitled to on the basis of the information before him.

(4) Any default judgement issued by a chairman under this rule shall be recorded in writing and shall be signed by him. The Secretary shall send a copy of that judgement to the parties, to the Agency, and,

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(a) S.R. 1994 No. 308

if the proceedings were referred to the tribunal by a court, to that court. The Secretary shall also inform the parties of their right to have the default judgement reviewed under rule 33. The Secretary shall put a copy of the default judgement on the Register (subject to rule 49 (sexual offences and the Register)).

(5) The claimant or respondent may apply to have the default judgement reviewed in accordance with rule 33.

(6) If the parties settle the proceedings (either by means of a compromise agreement or through the Agency) before or on the date on which a default judgement in those proceedings is issued, the default judgement shall have no effect.

(7) When paragraph (6) applies, either party may apply under rule 33 to have the default judgement revoked.

#### **Taking no further part in the proceedings**

9. A respondent who has not presented a response to a claim or whose response has not been accepted shall not be entitled to take any part in the proceedings except to –

- (a) make an application under rule 33 (review of default judgements);
- (b) make an application under rule 35 (preliminary consideration of application for review) in respect of rule 34(3)(a), (b) or (e);
- (c) be called as a witness by another person; or
- (d) be sent a copy of a document or corrected entry in accordance with rule 8(4), 29(2) or 37,

and in these Rules the word “party” or “respondent” includes a respondent only 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*

#### **General power to manage proceedings**

10.—(1) Subject to the following rules, the chairman may at any time either on the application of a party or on his own initiative make an order in relation to any matter which appears to him to be appropriate. Such orders may be any of those listed in paragraph (2) or such other orders as he thinks fit. Subject to the following rules, orders may be issued as a result of a chairman considering the papers before him in the absence of the parties, or at a hearing.

- (2) Examples of orders which may be made under paragraph (1) are orders –
  - (a) as to the manner in which the proceedings are to be conducted, including any time limit to be observed;
  - (b) that a party provide additional information;
  - (c) requiring the attendance of any person in Northern Ireland to give evidence and to produce documents or information;
  - (d) requiring any person in Northern Ireland to disclose documents or information to a party or to allow a party to inspect such material as might be ordered by a county court;
  - (e) extending any time limit, whether or not expired (subject to rules 4(5), 11(2), 25(5), 30(5), 33(1), 35(1), 38(7), 42(5) and 48(9));
  - (f) requiring the provision of written answers to questions put by the tribunal or chairman;
  - (g) that, subject to rule 22(8), a short conciliation period be extended into a standard conciliation period;
  - (h) staying the whole or part of any proceedings;
  - (i) that part of the proceedings be dealt with separately;
  - (j) that different claims be considered together;
  - (k) that any person who the chairman or tribunal considers may be liable for the remedy claimed should be made a respondent in the proceedings;
  - (l) dismissing the claim against a respondent who is no longer directly interested in the claim;
  - (m) postponing or adjourning any hearing;
  - (n) varying or revoking other orders;
  - (o) giving notice to the parties of a pre-hearing review or a hearing under rule 26;
  - (p) giving notice under rule 19;
  - (q) giving leave to amend a claim or response;
  - (r) that any person who the chairman or tribunal considers has an interest in the outcome of the proceedings may be joined as a party to the proceedings;
  - (s) that a witness statement be prepared or exchanged; or

(t) as to the use of experts or interpreters in the proceedings.

(3) An order may specify the time at or within which and the place at which any act is required to be done. An order may also impose conditions and it shall inform the parties of the potential consequences of non-compliance set out in rule 13.

(4) When a requirement has been imposed under paragraph (1) the person subject to the requirement may make an application under rule 11 (applications in proceedings) for the order to be varied or revoked.

(5) An order described in paragraph (2)(d) which requires a person other than a party to grant discovery or inspection of material may be made only when the discovery sought is necessary in order to dispose fairly of the claim or to save expense.

(6) Any order containing a requirement described in paragraph (2)(c) or (d) shall state that under Article 9(4) of the Industrial Tribunals Order<sup>(a)</sup>, any person who without reasonable excuse fails to comply with the requirement shall be liable on summary conviction to a fine, and the document shall also state the amount of the current maximum fine.

(7) An order as described in paragraph (2)(j) may be made only if all relevant parties have been given notice that such an order may be made and they have been given the opportunity to make oral or written representations as to why such an order should or should not be made.

(8) Any order made under this rule shall be recorded in writing and signed by the chairman and the Secretary shall inform all parties to the proceedings of any order made as soon as is reasonably practicable.

### **Applications in proceedings**

11.—(1) At any stage of the proceedings a party may apply for an order to be issued, varied or revoked or for a case management discussion or pre-hearing review to be held.

(2) An application for an order must be made not less than 10 days before the date of the hearing at which it is to be considered (if any) unless it is not reasonably practicable to do so, or the chairman or tribunal considers it in the interests of justice that shorter notice be allowed. The application must (unless a chairman orders otherwise) be in writing to the Office of the Tribunals and include the case number for the proceedings and the reasons for the request. If the application is for a case management discussion or a pre-hearing review to be held, it must identify any orders sought.

(3) An application for an order must include an explanation of how the order would assist the tribunal or chairman in dealing with the proceedings efficiently and fairly.

(4) Where a party is legally represented in relation to the application (except where the application is for a witness order described in rule 10(2)(c) only), that party or his representative must, at the same time as the application is sent to the Office of the Tribunals provide all other parties with the following information in writing –

- (a) details of the application and the reasons why it is sought;
- (b) notification that any objection to the application must be sent to the Office of the Tribunals within 7 days of receiving the application, or before the date of the hearing (whichever date is the earlier); and
- (c) that any objection to the application must be copied to both the Office of the Tribunals and all other parties,

and the party or his representative must confirm in writing to the Office of the Tribunals that this rule has been complied with.

(5) Where a party is not legally represented in relation to the application, the Secretary shall inform all other parties of the matters listed in paragraph (4)(a) to (c).

(6) A chairman may refuse a party's application and if he does so the Secretary shall inform the parties in writing of such refusal unless the application is refused at a hearing.

### **Chairman acting on his own initiative**

12.—(1) Subject to paragraph (2) and to rules 10(7) and 18(7), a chairman may make an order on his own initiative with or without hearing the parties or giving them an opportunity to make written or oral representations. He may also decide to hold a case management discussion or pre-hearing review on his own initiative.

(2) Where a chairman makes an order without giving the parties the opportunity to make representations –

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(a) Article 9(4)(c) was inserted by Schedule 1, paragraph 18(3) to S.I. 1998/1265 (N.I. 8)

- (a) the Secretary must send to the party affected by such order a copy of the order and a statement explaining the right to make an application under sub-paragraph (b); and
- (b) a party affected by the order may apply to have it varied or revoked.

(3) An application under paragraph (2)(b) must (subject to rule 10(2)(e)) be made before the time at which, or the expiry of the period within which, the order was to be complied with. Such an application must (unless a chairman orders otherwise) be made in writing to the Office of the Tribunals and it must include the reasons for the application. Paragraphs (4) and (5) of rule 11 apply in relation to informing the other parties of the application.

### **Compliance with orders and practice directions**

13.—(1) If a party does not comply with an order made under these Rules, under rule 7 of Schedule 4 or a practice direction, a chairman or tribunal –

- (a) may make an order in respect of costs or preparation time under rules 38 to 47; or
- (b) may (subject to paragraph (2) and rule 19) at a pre-hearing review or a hearing under rule 26 make an order to strike out the whole or part of the claim or, as the case may be, the response and, where appropriate, order that a respondent be debarred from responding to the claim altogether.

(2) An order may also provide that unless the order is complied with the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 19 or hold a pre-hearing review or a hearing under rule 26.

- (3) Chairmen and tribunals shall comply with any practice directions issued under regulation 9.

### *Different types of hearing*

### **Hearings – general**

14.—(1) A chairman or a tribunal (depending on the relevant rule) may hold the following types of hearing –

- (a) a case management discussion under rule 17;
- (b) a pre-hearing review under rule 18;
- (c) a hearing under rule 26; or
- (d) a review hearing under rule 33 or 36.

(2) So far as it appears appropriate to do so, the chairman or tribunal shall seek to avoid formality in his or 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.

(3) The chairman or tribunal (as the case may be) shall make such enquiries of persons appearing before him or it and of witnesses as he or it considers appropriate and shall otherwise conduct the hearing in such manner as he or it considers most appropriate for the clarification of the issues and generally for the just handling of the proceedings.

(4) Unless the parties agree to shorter notice, the Secretary shall send notice of any hearing (other than a case management discussion) to every party not less than 14 days before the date fixed for the hearing and shall inform them that they have the opportunity to submit written representations and to advance oral argument. The Secretary shall give the parties reasonable notice before a case management discussion is held.

(5) If a party wishes to submit written representations for consideration at a hearing (other than a case management discussion) he shall present them to the Office of the Tribunals not less than 7 days before the hearing and shall at the same time send a copy to all other parties.

(6) The tribunal or chairman may, if it or he considers it appropriate, consider representations in writing which have been submitted otherwise than in accordance with paragraph (5).

### **Use of electronic communications**

15.—(1) A hearing (other than those mentioned in sub-paragraphs (c) and (d) of rule 14(1)) may be conducted by use of electronic communications provided that the chairman or tribunal conducting the hearing considers it just and equitable to do so.

(2) Where a hearing is required by these Rules to be held in public and it is to be conducted by use of electronic communications in accordance with this rule then, subject to rule 16, it must be held in a place to which the public has access and using equipment so that the public is able to hear all parties to the communication.

### **Hearings which may be held in private**

16.—(1) A hearing or part of one may be conducted in private for the purpose of hearing from any person evidence or representations likely in the opinion of the tribunal or chairman to consist of information –

- (a) which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision;
- (b) which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence placed in him by another person; or
- (c) 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 Industrial Relations (Northern Ireland) Order 1992(a), cause substantial injury to any undertaking of his or any undertaking in which he works.

(2) Where a tribunal or chairman decides to hold a hearing or part of one in private, it or he shall give reasons for doing so.

#### *Case management discussions*

### **Conduct of case management discussions**

17.—(1) Case management discussions are interim hearings and may deal with matters of procedure and management of the proceedings and they may be held in private. Case management discussions shall be conducted by a chairman.

(2) Any determination of a person's civil rights or obligations shall not be dealt with in a case management discussion. The matters listed in rule 10(2) are examples of matters which may be dealt with at case management discussions. Orders listed in rule 18(7) may not be made at a case management discussion.

#### *Pre-hearing reviews*

### **Conduct of pre-hearing reviews**

18.—(1) Pre-hearing reviews are interim hearings and shall be conducted by a chairman unless the circumstances in paragraph (3) are applicable. Subject to rule 16, they shall take place in public.

(2) At a pre-hearing review the chairman may carry out a preliminary consideration of the proceedings and he may –

- (a) determine any interim or preliminary matter relating to the proceedings;
- (b) issue any order in accordance with rule 10 or do anything else which may be done at a case management discussion;
- (c) order that a deposit be paid in accordance with rule 20 without hearing evidence;
- (d) consider any oral or written representations or evidence;
- (e) deal with an application for interim relief made under Article 163 of the Employment Rights Order.

(3) Pre-hearing reviews shall be conducted by a tribunal composed in accordance with Article 6(1) and (2) of the Industrial Tribunals Order if –

- (a) a party has made a request in writing not less than 10 days before the date on which the pre-hearing review is due to take place that the pre-hearing review be conducted by a tribunal instead of a chairman; and
- (b) a chairman considers that one or more substantive issues of fact are likely to be determined at the pre-hearing review, that it would be desirable for the pre-hearing review to be conducted by a tribunal and he has issued an order that the pre-hearing review be conducted by a tribunal.

(4) If an order is made under paragraph (3), any reference to a chairman in relation to a pre-hearing review shall be read as a reference to a tribunal.

(5) Notwithstanding the preliminary or interim nature of a pre-hearing review, at a pre-hearing review the chairman may make a decision on any preliminary issue of substance relating to the proceedings. Orders made at a pre-hearing review may result in the proceedings being struck out or dismissed or otherwise determined with the result that a hearing under rule 26 is no longer necessary in those proceedings.

(6) Before an order listed in paragraph (7) is made, notice must be given in accordance with rule 19. The orders listed in paragraph (7) may be made at a pre-hearing review or a hearing under rule 26 if one

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

of the parties has so requested. If no such request has been made such orders may be made in the absence of the parties.

- (7) Subject to paragraph (6), a chairman or tribunal may make an order –
- (a) as to the entitlement of any party to bring or contest particular proceedings;
  - (b) striking out or amending all or part of any claim or response on the grounds that it is scandalous, vexatious or misconceived;
  - (c) striking out any claim or response (or part of one) on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
  - (d) striking out a claim which has not been actively pursued;
  - (e) striking out a claim or response (or part of one) for non-compliance with an order or practice direction;
  - (f) striking out a claim where the chairman or tribunal considers that it is no longer possible to have a fair hearing under rule 26 in those proceedings;
  - (g) making a restricted reporting order (in accordance with rule 50).

(8) A claim or response or any part of one may be struck out under these Rules only on the grounds stated in paragraph (7)(b) to (f).

(9) If at a pre-hearing review a requirement to pay a deposit under rule 20 has been considered, the chairman who conducted that pre-hearing review shall not be a member of the tribunal at the hearing under rule 26 in relation to those proceedings.

#### **Notice requirements**

19.—(1) Before a chairman or a tribunal makes an order described in rule 18(7), except where the order is one described in rule 13(2) or it is a temporary restricted reporting order made in accordance with rule 50, the Secretary shall send notice to the party against whom it is proposed that the order should be made. The notice shall inform him of the order to be considered and give him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send such notice to that party if the party has been given an opportunity to give reasons orally to the chairman or the tribunal as to why the order should not be made.

(2) Where a notice required by paragraph (1) is sent in relation to an order to strike out a claim which has not been actively pursued, unless the contrary is proved, the notice shall be treated as if it were received by the addressee if it has been sent to the address specified in the claim as the address to which notices are to be sent (or to any subsequent replacement for that address which has been notified to the Office of the Tribunals).

#### *Payment of a deposit*

#### **Requirement to pay a deposit in order to continue with proceedings**

20.—(1) At a pre-hearing review if a chairman considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have little reasonable prospect of success, the chairman 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 take part in the proceedings relating to that matter.

(2) No order shall be made under this rule unless the chairman 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.

(3) An order made under this rule, and the chairman's grounds for making such an order, shall be recorded in a document signed by the chairman. A copy of that document shall be sent to each of the parties and shall be accompanied by a note explaining that if the party against whom the order is made persists in making those contentions relating to the matter to which the order relates, he may have an award of costs or preparation time made against him and could lose his deposit.

(4) If a party against whom an order under this rule has been made does not pay the amount specified in that 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 chairman may allow in the light of representations made by that party within the period of 21 days,

a chairman shall strike out the claim or response of that party or, as the case may be, the part of it to which the order relates.

(5) The deposit paid by a party under an order made under this rule shall be refunded to him in full except where rule 47 applies.

### *Conciliation*

#### **Documents to be sent to conciliators**

21. In proceedings brought under the provisions of any statutory provision providing for conciliation, except where the Secretary and the Agency have agreed otherwise, the Secretary shall send copies of all documents, orders, decisions, written reasons and notices to a conciliation officer of the Agency.

#### **Fixed period for conciliation**

22.—(1) This rule and rules 23 and 24 apply to all proceedings before a tribunal which are brought under any statutory provision which provides for conciliation except national security proceedings and proceedings which include a claim made under one or more of the following statutory provisions –

- (a) the Equal Pay Act, section 2(1);
- (b) the Sex Discrimination Order, Article 63(a);
- (c) the Race Relations Order, Article 52(b);
- (d) the Disability Discrimination Act, section 17A or 25(8)(c);
- (e) the Sexual Orientation Regulations, regulation 34; and
- (f) the Employment Rights Order, Articles 70B, 134A and 137(5A)(d) (protected disclosures).

(2) In all proceedings to which this rule applies there shall be a conciliation period to give a time limited opportunity for the parties to reach, in conjunction with the Agency, a conciliated settlement (the “conciliation period”). In proceedings in which there is more than one respondent there shall be a conciliation period in relation to each respondent.

(3) In any proceedings to which this rule applies a hearing under rule 26 shall not take place during a conciliation period and where the time and place of a hearing under rule 26 has been fixed to take place during a conciliation period, such hearing shall be postponed until after the end of any conciliation period. The fixing of the time and place for such hearing may take place during a conciliation period. Pre-hearing reviews and case management discussions may take place during a conciliation period.

(4) In relation to each respondent the conciliation period commences on the date on which the Secretary sends a copy of the claim to that respondent. The duration of the conciliation period shall be determined in accordance with the following paragraphs, and rule 23.

(5) In any proceedings which consist of claims under any of the following statutory provisions (but no other statutory provisions) the conciliation period is seven weeks (the “short conciliation period”) –

- (a) the Industrial Tribunals Order, Article 5(e) (breach of contract);
- (b) the following provisions of the Employment Rights Order –
  - (i) Articles 45 to 59(f) (failure to pay wages or an unauthorised deduction from wages);
  - (ii) Article 60 (right to a guarantee payment);
  - (iii) Article 78(g) (right to time off for public duties);
  - (iv) Article 80 (right to time off to look for work or arrange training);
  - (v) Article 81 (right to remuneration for time off under Article 80);
  - (vi) Article 83 (right to time off for ante-natal care);
  - (vii) Article 84 (right to remuneration for time off under Article 83);
  - (viii) Article 92(h) (right to time off for carrying out trade union duties);
  - (ix) Article 92A(i) (time off for union learning representatives);
  - (x) Article 93(j) (right to remuneration for time off under Article 92);

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(a) Article 63 was modified by S.I. 1998/3162 (N.I. 21), Schedule 3

(b) Article 52 was modified by S.I. 1998/3162 (N.I. 21), Schedule 3

(c) Section 8 was renumbered 17A by S.R. 2004 No. 55, regulation 9; section 25(8) was inserted by S.R. 2004 No. 55, regulation 19(3)

(d) Articles 70A, 134B and 137(5A) were inserted, respectively, by S.I. 1998/1763 (N.I. 17), Articles 5, 8 and 9

(e) Article 5 was modified by S.I. 1999/663, Schedule 1, paragraph 27(1)

(f) Article 55 was modified by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 9; insertions were made into Article 59(1) by S.I. 2002/2836 (N.I. 2), Schedule 2, paragraph 4(5)

(g) Article 78 was amended by S.I. 1998/1759 (N.I. 13), Schedule 5, Part II

(h) Article 92 was amended by S.R. 1999 No. 432, regulation 6

(i) Article 92A was inserted by S.I. 2003/2902 (N.I. 15), Article 31(2)

(j) Article 93 was amended by S.I. 2003/2902 (N.I. 15), Article 31(3)



- (xi) Article 94(a) (right to time off for trade union activities);
  - (xii) Article 96(b) (failure to pay remuneration whilst suspended for medical reasons);
  - (xiii) Article 100 (right to remuneration whilst suspended on maternity grounds);
  - (xiv) Articles 198 or 199 (failure to pay a redundancy payment);
  - (xv) Article 220 (failure to pay remuneration under a protective award),
  - (c) Article 35 of the Trade Union and Labour Relations (Northern Ireland) Order 1995(c) (right not to suffer deduction of unauthorised subscriptions);
  - (d) regulation 11(5) of the Transfer of Undertakings (Protection of Employment) Regulations 1981(d) (failure to pay compensation following failure to inform or consult).
- (6) In all other proceedings to which this rule applies the conciliation period is thirteen weeks (the “standard conciliation period”).
- (7) In proceedings to which the standard conciliation period applies, that period shall be extended by a period of a further two weeks if, before the expiry of the standard conciliation period, the Agency notifies the Secretary in writing that the following circumstances apply:
- (a) all parties to the proceedings agree to the extension of any relevant conciliation period;
  - (b) a proposal for settling the proceedings has been made by a party and is under consideration by the other parties to the proceedings; and
  - (c) the Agency considers it probable that the proceedings will be settled during the further extended conciliation period.
- (8) A short conciliation period in any proceedings may, if that period has not already ended, be extended into a standard conciliation period if a chairman considers on the basis of the complexity of the proceedings that a standard conciliation period would be more appropriate. Where a chairman makes an order extending the conciliation period in such circumstances, the Secretary shall inform the parties to the proceedings and the Agency in writing as soon as is reasonably practicable.

#### **Early termination of conciliation period**

23.—(1) Should one of the following circumstances arise during any conciliation period which relates to a particular respondent (referred to in this rule as the relevant respondent), that conciliation period shall terminate early on the relevant date specified (and if more than one circumstance or date listed below is applicable to any conciliation period, that conciliation period shall terminate on the earliest of those dates) –

- (a) where a default judgement is issued against the relevant respondent which determines both liability and remedy, the date on which the default judgement is signed;
- (b) where a default judgement is issued against the relevant respondent which determines liability only, the date which is 14 days after the date on which the default judgement is signed;
- (c) where either the claim or the response entered by the relevant respondent is struck out, the date on which the order to strike out is signed;
- (d) where the claim is withdrawn, the date of receipt by the Office of the Tribunals of the notice of withdrawal;
- (e) where the claimant or the relevant respondent has informed the Agency in writing that they do not wish to proceed with attempting to conciliate in relation to those proceedings, the date on which the Agency sends notice of such circumstances to the parties and to the Office of the Tribunals;
- (f) where the claimant and the relevant respondent have reached a settlement by way of a compromise agreement (including a compromise agreement to refer proceedings to arbitration), the date on which the Office of the Tribunals receives notice from both of those parties to that effect;
- (g) where the claimant and the relevant respondent have reached a settlement through the Agency (including a settlement to refer the proceedings to arbitration), the date of the settlement;
- (h) where no response presented by the relevant respondent has been accepted in the proceedings and no default judgement has been issued against that respondent, the date which is 14 days after the expiry of the time limit for presenting the response to the Secretary.

(2) Where a chairman or tribunal makes an order which re-establishes the relevant respondent’s right to respond to the claim (for example, revoking a default judgement) and when that order is made, the conciliation period in relation to that respondent has terminated early under paragraph (1) or has otherwise

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(a) Article 94 was amended by S.I. 2003/2902 (N.I. 15), Article 31(4) and (5)  
 (b) Article 96 was modified by S.R. 2000 No. 375, Schedule 10, paragraph 2  
 (c) S.I. 1995/1980 (N.I. 12); Article 35 was substituted by S.I. 1999/661 (N.I. 5), Article 3  
 (d) S.I. 1981/1794

expired, the chairman or tribunal may order that a further conciliation period shall apply in relation to that respondent if they consider it appropriate to do so.

(3) When an order is made under paragraph (2), the further conciliation period commences on the date of that order and the duration of that period shall be such period as the chairman may decide provided that it does not exceed a period of thirteen weeks beginning with the date of the order. This period shall be extended by a period of a further two weeks, if before the expiry of the conciliation period specified in the order, the Agency notifies the Secretary in writing that the circumstances listed in rule 22(7) apply.

#### **Effect of staying proceedings on the conciliation period**

24. Where during a conciliation period an order is made to stay the proceedings, that order has the effect of suspending any conciliation period in those proceedings. Any unexpired portion of a conciliation period takes effect from the date on which the stay comes to an end and continues for the duration of the unexpired portion of that conciliation period or two weeks (whichever is the greater).

#### *Withdrawal of proceedings*

#### **Right to withdraw proceedings**

25.—(1) A claimant may withdraw all or part of his claim at any time. This may be done either orally at a hearing or in writing in accordance with paragraph (2).

(2) To withdraw a claim or part of one in writing the claimant must inform the Office of the Tribunals of the claim or the parts of it which are to be withdrawn. Where there is more than one respondent the notification must specify against which respondents the claim is being withdrawn.

(3) The Secretary shall inform all other parties of the withdrawal. Withdrawal takes effect on the date on which the Office of the Tribunals (in the case of written notifications) or the tribunal (in the case of oral notification) receives notice of it. Withdrawal does not affect proceedings as to costs, preparation time or wasted costs.

(4) Where the whole claim is withdrawn, proceedings are brought to an end against the respondent on that date and the tribunal or chairman shall dismiss the proceedings. The proceedings cannot be continued by the claimant (unless the decision to dismiss is successfully reviewed or appealed).

(5) The time limit in paragraph (4) may be extended by a chairman if he considers it just and equitable to do so.

#### *The hearing*

#### **Hearings**

26.—(1) A hearing under this rule is held for the purpose of determining outstanding procedural or substantive issues or disposing of the proceedings. In any such proceedings there may be more than one hearing and there may be different categories of hearing, such as a hearing on liability, remedies, costs or preparation time.

(2) Any hearing of a claim under this rule shall be heard by a tribunal composed in accordance with Article 6(1), (2) and (3)(a) of the Industrial Tribunals Order.

(3) Any hearing of a claim under this rule shall take place in public, subject to rule 16.

#### **What happens at the hearing**

27.—(1) The President or the Vice-President shall fix the date, time and place of the hearing under rule 26 and the Secretary shall send to each party a notice of the hearing together with information and guidance as to procedure at the hearing.

(2) Subject to rule 14(2), at the hearing under rule 26 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) The tribunal shall require parties and witnesses who attend the hearing under rule 26 to give their evidence on oath or affirmation.

(4) The tribunal may exclude from the hearing under rule 26 any person who is to appear as a witness in the proceedings until such time as they give evidence if it considers it in the interests of justice to do so.

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(a) Article 6(1) and Article 6(3) were modified, respectively, by Schedule 1, paragraph 16(2) and by Article 4(2), (3) and (4) of S.I. 1998/1265 (N.I. 8)

(5) If a party fails to attend or to be represented (for the purpose of conducting the party's case at the hearing under rule 26) at the time and place fixed for such hearing, the tribunal may dismiss or dispose of the proceedings in the absence of that party or may adjourn the hearing to a later date.

(6) If a tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (5), it shall first consider any information in its possession which has been made available to it by the parties.

(7) At a hearing under rule 26 a tribunal may exercise any powers which may be exercised by a chairman under these Rules.

#### *Orders, decisions and reasons*

##### **Orders and decisions**

28.—(1) If the parties agree in writing upon the terms of any order or decision a chairman or tribunal may, if he or it thinks fit, make such order or decision.

(2) At the end of a hearing the chairman (or, as the case may be, the tribunal) shall either issue any order or decision orally or shall reserve the decision or order to be given in writing at a later date.

(3) Where a tribunal is composed of three persons any order or decision may be made or issued by a majority; and if a tribunal is composed of two persons only, the chairman has a second or casting vote.

##### **Form and content of decisions**

29.—(1) When a decision is reserved a written decision shall be sent to the parties at a later date. All decisions (whether issued orally or in writing) shall be recorded in writing and signed by the chairman.

(2) The Secretary shall provide a copy of the decision to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court. The Secretary shall include guidance to the parties on how the decision may be reviewed or appealed.

(3) Where the decision includes an award of compensation or a determination that one party is required to pay a sum to another (excluding an order for costs, allowances, preparation time or wasted costs), the document shall also contain a statement of the amount of compensation awarded, or of the sum required to be paid.

##### **Reasons**

30.—(1) A tribunal or chairman must give reasons (either oral or written) for any –

- (a) decision; or
- (b) order, if a request for reasons is made before or at the hearing at which the order is made.

(2) Reasons may be given orally at the time of issuing the decision or order or they may be reserved to be given in writing at a later date. If reasons are reserved, they shall be signed by the chairman and sent to the parties by the Secretary.

(3) Where oral reasons have been provided, written reasons shall only be provided –

- (a) in relation to decisions if requested by one of the parties within the time limit set out in paragraph (5); or
- (b) in relation to any decision or order if requested by the Court of Appeal at any time.

(4) When written reasons are provided, the Secretary shall send a copy of the reasons to all parties to the proceedings and record the date on which the reasons were sent. Written reasons shall be signed by the chairman.

(5) A request for written reasons for a decision must be made by a party either orally at the hearing (if the decision is issued at the hearing), or in writing within 14 days of the date on which the decision was sent to the parties. This time limit may be extended by a chairman where he considers it just and equitable to do so.

(6) Written reasons for a decision shall include the following information –

- (a) the issues which the tribunal or chairman has identified as being relevant to the claim;
- (b) if some identified issues were not determined, what those issues were and why they were not determined;
- (c) findings of fact relevant to the issues which have been determined;
- (d) a concise statement of the applicable law;
- (e) how the relevant findings of fact and applicable law have been applied in order to determine the issues; and

- (f) where the decision includes an award of compensation or a determination that one party make a payment to the other, a table showing how the amount or sum has been calculated or a description of the manner in which it has been calculated.

#### **Absence of chairman**

31. Where it is not possible for a decision, order or reasons to be signed by the chairman due to death, incapacity or absence –

- (a) if the chairman has dealt with the proceedings alone the document shall be signed by the President or the Vice-President when it is practicable for him to do so; and
- (b) if the proceedings have been dealt with by a tribunal composed of two or three persons, the document shall be signed by the other person or persons,

and any person who signs the document shall certify that the chairman is unable to sign.

#### **Entry of decisions and reasons in the Register**

32.—(1) Subject to rule 49, the Secretary shall enter a copy of the following documents in the Register –

- (a) any decision (including any order for costs, allowances, preparation time or wasted costs); and
- (b) any written reasons provided in accordance with rule 30 in relation to any decision.

(2) Written reasons for decisions shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal or chairman so orders. In such a case the Secretary shall send the reasons to each of the parties and where there are proceedings before a superior court relating to the decision in question, he shall send the reasons to that court, together with a copy of the entry in the Register of the decision to which the reasons relate.

#### *Power to review decisions*

#### **Review of default judgements**

33.—(1) A party may apply to have a default judgement against or in favour of him reviewed. An application must be made in writing and presented to the Office of the Tribunals within 14 days of the date on which the default judgement was sent to the parties. The 14 day time limit may be extended by a chairman if he considers that it is just and equitable to do so.

(2) The application must state the reasons why the default judgement should be varied or revoked. When it is the respondent applying to have the default judgement reviewed, the application must include with it the respondent's proposed response to the claim, an application for an extension of the time limit for presenting the response and an explanation of why paragraphs (1) and (5) of rule 4 were not complied with.

(3) A review of a default judgement shall be conducted by a chairman in public. Notice of the hearing and a copy of the application shall be sent by the Secretary to all other parties.

- (4) The chairman may –
  - (a) refuse the application for a review;
  - (b) vary the default judgement;
  - (c) revoke all or part of the default judgement; or
  - (d) confirm the default judgement,

and all parties to the proceedings shall be informed by the Secretary in writing of the chairman's decision on the application.

(5) A default judgement must be revoked if the whole of the claim was satisfied before or on the date the judgement was issued or if rule 8(6) applies. A chairman may revoke or vary all or part of a default judgement if the respondent has a reasonable prospect of successfully responding to the claim or part of it.

(6) In considering the application for a review of a default judgement the chairman must have regard to whether there was good reason for the response not having been presented within the applicable time limit.

(7) If the chairman decides that the default judgement should be varied or revoked and that the respondent should be allowed to respond to the claim the Secretary shall accept the response and proceed in accordance with rule 5(2).

### **Review of other decisions**

34.—(1) Parties may apply to have certain decisions made by a tribunal or a chairman reviewed under this rule, and rules 35 and 36. Those decisions are –

- (a) a decision not to accept a claim, response or counterclaim;
- (b) a decision which is a final determination of the proceedings or a particular issue in those proceedings (other than a default judgement but including an order for costs, allowances, preparation time or wasted costs); and
- (c) a decision made under rule 5(3) of Schedule 5.

(2) In relation to a decision not to accept a claim or response, only the party against whom the decision is made may apply to have the decision reviewed.

(3) Subject to paragraph (4), decisions may be reviewed on the following grounds only –

- (a) the decision was wrongly made as a result of an administrative error;
- (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 conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time; or
- (e) the interests of justice require such a review.

(4) A decision not to accept a claim or response may only be reviewed on the grounds listed in paragraph (3)(a) and (e).

(5) A tribunal or chairman may on its or his own initiative review a decision made by it or him on the grounds listed in paragraph (3) or (4).

(6) In this rule, rules 35 and 36, “decision” means a decision mentioned in paragraph (1).

### **Preliminary consideration of application for review**

35.—(1) An application under rule 34 to have a decision reviewed must be made to the Office of the Tribunals within 14 days of the date on which the decision was sent to the parties. The 14 day time limit may be extended by a chairman if he considers that it is just and equitable to do so.

(2) The application must be in writing and must identify the grounds of the application in accordance with rule 34(3), but if the decision to be reviewed was made at a hearing, an application may be made orally at that hearing.

(3) The application to have a decision reviewed shall be considered (without the need to hold a hearing) by the chairman of the tribunal which made the decision or, if that is not practicable, by –

- (a) any chairman nominated by the President or the Vice-President; or
- (b) the President or the Vice-President,

and that person shall refuse the application if he considers that there are no grounds for the decision to be reviewed under rule 34(3) or there is no reasonable prospect of the decision being varied or revoked.

(4) If an application for a review is refused after such preliminary consideration the Secretary shall inform the party making the application in writing of the chairman’s decision and his reasons for it. If the application for a review is not refused the decision shall be reviewed under rule 36.

### **The review**

36.—(1) Where a party has applied for a review and the application has not been refused after the preliminary consideration mentioned in rule 35, the decision shall be reviewed by the chairman or tribunal who made the original decision. If that is not practicable a different chairman or tribunal (as the case may be) shall be appointed by the President or the Vice-President.

(2) Where no application has been made by a party and the decision is being reviewed on the initiative of the tribunal or chairman, the review must be carried out by the same tribunal or chairman who made the original decision and –

- (a) a notice must be sent to each of the parties explaining in summary the grounds upon which it is proposed to review the decision and giving them an opportunity to give reasons why there should be no review; and
- (b) such notice must be sent before the expiry of 14 days from the date on which the original decision was sent to the parties.

(3) A tribunal or chairman who reviews a decision under paragraph (1) or (2) may confirm, vary or revoke the decision. If the decision is revoked, the tribunal or chairman must order the decision to be taken again. When an order is made that the original decision be taken again, if the original decision was taken by a chairman without a hearing, the new decision may be taken without hearing the parties and if the original decision was taken at a hearing a new hearing must be held.

#### **Correction of orders, decisions or reasons**

37.—(1) Clerical mistakes in any order, decision or reasons, or errors arising in those documents from an accidental slip or omission, may at any time be corrected by certificate by the chairman, the President or the Vice-President.

(2) If a document is corrected by certificate under paragraph (1), or if a decision is revoked or varied under rule 33 or 36 or altered in any way by order of a superior court, the Secretary shall alter any entry in the Register which is so affected to conform with the certificate or order and send a copy of any entry so altered to each of the parties and, if the proceedings have been referred to the tribunal by a court, to that court.

(3) Where a document omitted from the Register under rule 32 or 49 is corrected by certificate under this rule, 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 or reasons in question, he shall send a copy to that court together with a copy of the entry in the Register of the decision, if it has been altered under this rule.

#### *Costs orders*

#### **General powers to make costs orders**

38.—(1) Subject to paragraph (2) and in the circumstances listed in rules 39, 40 and 47 a tribunal or chairman may make an order (“a costs order”) that –

- (a) a party (“the paying party”) make a payment in respect of the costs incurred by another party (“the receiving party”);
- (b) the paying party pay to the Department, in whole or in part, any allowances paid by the Department to any person for the purposes of, or in connection with, that person’s attendance at the tribunal.

(2) A costs order may be made under rules 39, 40 and 47 only where the receiving party has been legally represented at the hearing under rule 26 or, in proceedings which are determined without such hearing, if the receiving party is legally represented when the proceedings are determined. If the receiving party has not been so legally represented a tribunal or chairman may make a preparation time order (subject to rules 42 to 45). (See rule 46 on the restriction on making a costs order and a preparation time order in the same proceedings.)

(3) For the purposes of these Rules “costs” shall mean fees, charges or disbursements incurred by or on behalf of a party in relation to the proceedings.

(4) A costs order may be made against or in favour of a respondent who has not had a response accepted in the proceedings in relation to the conduct of any part which he has taken in the proceedings.

(5) In these Rules “legally represented” means having the assistance of a person (including where that person is the receiving party’s employee) who –

- (a) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(a)</sup>;
- (b) is an advocate or solicitor in Scotland; or
- (c) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.

(6) Any costs order made under rules 39, 40 or 47 shall be payable by the paying party and not his representative.

(7) A party may apply for a costs order to be made at any time during the proceedings. An application may be made at the end of a hearing, or in writing to the Office of the Tribunals. An application for costs which is received by the Office of the Tribunals later than 28 days from the issuing of the decision determining the claim shall not be accepted or considered by a tribunal or chairman unless it or he considers that it is in the interests of justice to do so.

- (8) In paragraph (7), the date of issuing of the decision determining the claim shall be either –
  - (a) the date of the hearing under rule 26 if the decision was issued orally; or
  - (b) if the decision was reserved, the date on which the written decision was sent to the parties.

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(a) 1990 c. 41

(9) No costs order shall be made unless the Secretary has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send notice to that party if the party has been given an opportunity to give reasons orally to the chairman or tribunal as to why the order should not be made.

(10) Where a tribunal or chairman makes a costs order it or he shall provide written reasons for doing so if a request for written reasons is made within 14 days of the date of the costs order. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

#### **When a costs order must be made**

39.—(1) Subject to rule 38(2), a tribunal or chairman must make a costs order against a respondent where in proceedings for unfair dismissal a hearing under rule 26 has been postponed or adjourned and –

- (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before that hearing was due to take place; and
- (b) the postponement or adjournment of that hearing 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 claimant was dismissed, or of comparable or suitable employment.

(2) A costs order made under paragraph (1) shall relate to any costs incurred as a result of the postponement or adjournment of the hearing under rule 26.

#### **When a costs order may be made**

40.—(1) A tribunal or chairman may make a costs order when on the application of a party it or he has postponed the day or time fixed for or adjourned a hearing under rule 26 or pre-hearing review. The costs order may be 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.

(2) A tribunal or chairman shall consider making a costs order against a paying party where, in the opinion of the tribunal or chairman (as the case may be), any of the circumstances in paragraph (3) apply. Having so considered, the tribunal or chairman may make a costs order against the paying party if it or he considers it appropriate to do so.

(3) The circumstances referred to in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying party has been misconceived.

(4) A tribunal or chairman may make a costs order against a party who has not complied with an order or practice direction.

#### **The amount of a costs order**

41.—(1) The amount of a costs order against the paying party shall be determined in any of the following ways –

- (a) the tribunal may specify the sum which the paying party must pay to the receiving party, provided that sum does not exceed £10,000;
- (b) the parties may agree on a sum to be paid by the paying party to the receiving party and if they do so the costs order shall be for the sum so agreed;
- (c) the tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party with the amount to be paid being determined by way of detailed assessment in a 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.

(2) The tribunal or chairman may have regard to the paying party's ability to pay when considering whether it or he shall make a costs order or how much that order should be.

(3) For the avoidance of doubt, the amount of a costs order made under paragraph (1)(b) or (c) may exceed £10,000.

#### *Preparation time orders*

#### **General power to make preparation time orders**

42.—(1) Subject to paragraph (2) and in the circumstances described in rules 43, 44 and 47 a tribunal or chairman may make an order ("a preparation time order") that a party ("the paying party") make a payment in respect of the preparation time of another party ("the receiving party").

(2) A preparation time order may be made under rules 43, 44 or 47 only where the receiving party has not been legally represented at a hearing under rule 26 or, in proceedings which are determined without such hearing, if the receiving party has not been legally represented when the proceedings are determined. (See: rules 38 to 41 on when a costs order may be made; rule 38(5) for the definition of legally represented; and rule 46 on the restriction on making a costs order and a preparation time order in the same proceedings.)

(3) For the purposes of these Rules preparation time shall mean time spent by –

- (a) the receiving party or his employees carrying out preparatory work directly relating to the proceedings; and
- (b) the receiving party's legal or other advisers relating to the conduct of the proceedings,

up to but not including time spent at any hearing under rule 26.

(4) A preparation time order may be made against a respondent who has not had a response accepted in the proceedings in relation to the conduct of any part which he has taken in the proceedings.

(5) A party may apply to the tribunal for a preparation time order to be made at any time during the proceedings. An application may be made at the end of a hearing or in writing to the Secretary. An application for preparation time which is received by the Office of the Tribunals later than 28 days from the issuing of the decision determining the claim shall not be accepted or considered by a tribunal or chairman unless it or he considers that it is in the interests of justice to do so.

(6) In paragraph (5) the date of issuing of the decision determining the claim shall be either –

- (a) the date of the hearing under rule 26 if the decision was issued orally; or
- (b) if the decision was reserved, the date on which the written decision was sent to the parties.

(7) No preparation time order shall be made unless the Secretary has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send notice to that party if the party has been given an opportunity to give reasons orally to the chairman or tribunal as to why the order should not be made.

(8) Where a tribunal or chairman makes a preparation time order it or he shall provide written reasons for doing so if a request for written reasons is made within 14 days of the date of the preparation time order. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

#### **When a preparation time order must be made**

43.—(1) Subject to rule 42(2), a tribunal or chairman must make a preparation time order against a respondent where in proceedings for unfair dismissal a hearing under rule 26 has been postponed or adjourned and –

- (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before that hearing; and
- (b) the postponement or adjournment of that hearing 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 claimant was dismissed, or of comparable or suitable employment.

(2) A preparation time order made under paragraph (1) shall relate to any preparation time spent as a result of the postponement or adjournment of the hearing under rule 26.

#### **When a preparation time order may be made**

44.—(1) A tribunal or chairman may make a preparation time order when on the application of a party it or he has postponed the day or time fixed for or adjourned a hearing under rule 26 or a pre-hearing review. The preparation time order may be against or, as the case may require, in favour of that party as respects any preparation time spent as a result of the postponement or adjournment.

(2) A tribunal or chairman shall consider making a preparation time order against a party (the paying party) where, in the opinion of the tribunal or the chairman (as the case may be), any of the circumstances in paragraph (3) apply. Having so considered the tribunal or chairman may make a preparation time order against that party if it or he considers it appropriate to do so.

(3) The circumstances described in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying party has been misconceived.

(4) A tribunal or chairman may make a preparation time order against a party who has not complied with an order or practice direction.



### **Calculation of a preparation time order**

45.—(1) In order to calculate the amount of preparation time the tribunal or chairman shall make an assessment of the number of hours spent on preparation time on the basis of –

- (a) information on time spent provided by the receiving party; and
- (b) the tribunal or chairman's own assessment of what it or he considers to be a reasonable and proportionate amount of time to spend on such preparatory work and with reference to, for example, matters such as the complexity of the proceedings, the number of witnesses and documentation required.

(2) Once the tribunal or chairman has assessed the number of hours spent on preparation time in accordance with paragraph (1), it or he shall calculate the amount of the award to be paid to the receiving party by applying an hourly rate of £25.00 to that figure (or such other figure calculated in accordance with paragraph (4)). No preparation time order made under these Rules may exceed the sum of £10,000.

(3) The tribunal or chairman may have regard to the paying party's ability to pay when considering whether it or he shall make a preparation time order or how much that order should be.

(4) For the year commencing on 6th April 2006, the hourly rate of £25.00 shall be increased by the sum of £1.00 and for each subsequent year commencing on 6th April, the hourly rate for the previous year shall also be increased by the sum of £1.00.

### **Restriction on making costs orders and preparation time orders**

46.—(1) A tribunal or chairman may not make a preparation time order and a costs order in favour of the same party in the same proceedings. However where a preparation time order is made in favour of a party in proceedings, the tribunal or chairman may make a costs order in favour of another party or in favour of the Department under rule 38(1)(b) in the same proceedings.

(2) If a tribunal or a chairman wishes to make either a costs order or a preparation time order in proceedings, before the claim has been determined, it or he may make an order that either costs or preparation time be awarded to the receiving party. In such circumstances a tribunal or chairman may decide whether the award should be for costs or preparation time after the proceedings have been determined.

### **Costs or preparation time orders when a deposit has been taken**

47.—(1) Where –

- (a) a party has been ordered under rule 20 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 or chairman has found against that party in its or his decision; and
- (c) no award of costs or preparation time has been made against that party arising out of the proceedings on the matter,

the tribunal or chairman shall consider whether to make a costs or preparation time order against that party on the ground that the party conducted the proceedings relating to the matter unreasonably in persisting in having the matter determined; but the tribunal or chairman shall not make a costs or preparation time order on that ground unless it or he has considered the document recording the order under rule 20 and is of the opinion that the grounds which caused the tribunal or chairman to find against the party in its decision were substantially the same as the grounds recorded in that document for considering that the contentions of the party had little reasonable prospect of success.

(2) Where a costs or preparation time order is made against a party who has had an order under rule 20 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 costs or preparation time order –

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

and if the amount of the deposit exceeds the amount of the costs or preparation time order, the balance shall be refunded to the party who paid it.

### *Wasted costs orders against representatives*

#### **Personal liability of representatives for costs**

48.—(1) A tribunal or chairman may make a wasted costs order against a party's representative.

(2) In a wasted costs order the tribunal or chairman may –

- (a) disallow, or order the representative of a party to meet, the whole or part of any wasted costs of any party (including an order that the representative repay to his client any costs which have already been paid); and
- (b) order the representative to pay to the Department, in whole or in part, any allowances paid by the Department to any person for the purposes of, or in connection with, that person's attendance at the tribunal by reason of the representative's conduct of the proceedings.

(3) "Wasted costs" means any costs incurred by a party –

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the tribunal or chairman considers it unreasonable to expect that party to pay.

(4) In this rule "representative" means a party's legal or other representative or any employee of such representative, but it does not include a representative who is not acting in pursuit of profit with regard to those proceedings.

(5) A wasted costs order may be made in favour of a party whether or not that party is legally represented and such an order may also be made in favour of a representative's own client. A wasted costs order may not be made against a representative where that representative is an employee of a party.

(6) Before making a wasted costs order, the tribunal or chairman shall give the representative a reasonable opportunity to make oral or written representations as to reasons why such an order should not be made. The tribunal or chairman may also have regard to the representative's ability to pay when considering whether to make a wasted costs order or how much that order should be.

(7) Where a tribunal or chairman makes a wasted costs order, it or he must specify in the order the amount to be disallowed or paid.

(8) The Secretary shall inform the representative's client in writing –

- (a) of any proceedings under this rule; or
- (b) of any order made under this rule against the party's representative.

(9) Where a tribunal or chairman makes a wasted costs order it or he shall provide written reasons for doing so if a request is made for written reasons within 14 days of the date of the wasted costs order. This 14 day time limit may not be extended under rule 10. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

### *Powers in relation to specific types of proceedings*

#### **Sexual offences and the Register**

49. In any proceedings involving allegations of the commission of a sexual offence the tribunal, the chairman 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.

#### **Restricted reporting orders**

50.—(1) A restricted reporting order may be made in the following types of proceedings –

- (a) any case which involves allegations of sexual misconduct;
- (b) a complaint under section 17A or 25(8)(a) of the Disability Discrimination Act in which evidence of a personal nature is likely to be heard by the tribunal or a chairman.

(2) A party may apply for a restricted reporting order (either temporary or full) in writing to the Office of the Tribunals, or orally at a hearing, or the tribunal or chairman may make the order on its or his own initiative without any application having been made.

(3) A chairman or tribunal may make a temporary restricted reporting order without holding a hearing or sending a copy of the application to other parties.

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(a) Section 8 was renumbered 17A by S.R. 2004 No. 55, regulation 9; section 25(8) was inserted by S.R. 2004 No. 55, regulation 19(3)

(4) Where a temporary restricted reporting order has been made the Secretary shall inform all parties to the proceedings in writing as soon as possible of –

- (a) the fact that the order has been made; and
- (b) their right to apply to have the temporary restricted reporting order revoked or converted into a full restricted reporting order within 14 days of the temporary order having been made.

(5) If no application is made under paragraph (4)(b) within the 14 days, the temporary restricted reporting order shall lapse and cease to have any effect on the fifteenth day after the order was made. If such an application is made the temporary restricted reporting order shall continue to have effect until the pre-hearing review or hearing under rule 26 at which the application is considered.

(6) All parties must be given an opportunity to advance oral argument at a pre-hearing review or a hearing under rule 26 before a tribunal or chairman decides whether or not to make a full restricted reporting order (whether or not there was previously a temporary restricted reporting order in the proceedings).

(7) Any person may make an application to the chairman or tribunal to have a right to make representations before a full restricted reporting order is made. The chairman or tribunal shall allow such representations to be made where he or it considers that the applicant has a legitimate interest in whether or not the order is made.

(8) Where a tribunal or chairman makes a restricted reporting order –

- (a) it or he shall specify in the order the persons who may not be identified;
- (b) a full order shall remain in force until both liability and remedy have been determined in the proceedings unless it is revoked earlier; and
- (c) the Secretary shall ensure that a notice of the fact that a restricted reporting order has been made in relation to those proceedings is displayed on the notice board of the industrial 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.

(9) Where a restricted reporting order has been made under paragraph (1)(b) and the proceedings to which it relates are being dealt with together with any other proceedings, the tribunal or chairman may order that the restricted reporting order applies also in relation to those other proceedings or a part of them.

(10) A tribunal or chairman may revoke a restricted reporting order at any time.

(11) For the purposes of this rule liability and remedy are determined in the proceedings on the date recorded as being the date on which the decision disposing of the claim was sent to the parties, and references to a restricted reporting order include references to both a temporary and a full restricted reporting order.

### **Proceedings involving the Northern Ireland National Insurance Fund**

51. The Department shall be entitled to appear as if it were a party and be heard at any hearing in relation to 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.

### **Collective agreements**

52. Where a claim includes a complaint under Article 77A(4A)(a) of the Sex Discrimination Order relating to a term of a collective agreement, the following persons, whether or not identified in the claim, shall be regarded as the persons against whom a remedy is claimed and shall be treated as respondents for the purposes of these Rules, that is to say –

- (a) the claimant'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 terms were to be varied voluntarily, would be likely, in the opinion of a chairman, to negotiate the variation;

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

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

## **Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981**

53. In relation to any claim in respect of an application under Article 5C of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981(a) for the variation or revocation of a prohibition order, the Department shall be treated as the respondent in such proceedings for the purposes of these Rules. In relation to such an application the claim does not need to include the name and address of the persons against whom the claim is being made.

### **National security proceedings**

54.—(1) The Secretary of State (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 or chairman by notice to the Secretary to –

- (a) conduct proceedings in private for all or part of particular Crown employment proceedings;
- (b) exclude the claimant from all or part of particular Crown employment proceedings;
- (c) exclude the claimant'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 or chairman may, if it or he considers it expedient in the interests of national security, by order –

- (a) do anything which can be required by direction to be done under paragraph (1);
- (b) order 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 sub-paragraph (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 the Secretary of State has informed the Secretary in accordance with paragraph (3) that he wishes to address the tribunal or chairman with a view to an order being made under sub-paragraph (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 or chairman decides whether or not to make such an order;
- (c) take steps to keep secret all or part of the reasons for its decision,

and the tribunal or chairman (as the case may be) shall keep under review any order it or he has made under this paragraph.

(3) In any proceedings in which the Secretary of State considers that it would be appropriate for a tribunal or chairman 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 or chairman thereon. The Secretary of State shall inform the Secretary by notice that he wishes to address the tribunal or chairman and the Secretary shall copy the notice to the parties.

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

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

55.—(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(b) of that Order (participation in official industrial action) a tribunal or chairman may adjourn the proceedings where civil proceedings have been brought until such time as interim proceedings arising out of the civil proceedings have been concluded.

(2) In this rule –

- (a) “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 claimant 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(c) not actionable in tort; and

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

(b) Article 144A was inserted by S.I. 1999/2790 (N.I. 9), Schedule 5, paragraph 6

(c) S.I. 1995/1980 (N.I. 12)

- (b) the interim proceedings shall not be regarded as having concluded until all rights of appeal have been exhausted or the time for presenting any appeal in the course of the interim proceedings has expired.

### **Devolution issues**

56.—(1) In any proceedings in which a devolution issue within the meaning of paragraph 1 of Schedule 10 to the Northern Ireland Act 1998(a) arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless they are 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 claim and the response.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receiving it, 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.

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

57. Where a tribunal or chairman 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.

### **Transfer of proceedings from a court**

58. Where proceedings are referred to a tribunal by a court, these Rules shall apply to them as if the proceedings had been sent to the Secretary by the claimant.

### *General provisions*

#### **Powers**

59.—(1) Subject to the provisions of these Rules and any practice directions, a tribunal or chairman may regulate its or his own procedure.

(2) At a hearing under rule 26 or a pre-hearing review held in accordance with rule 18(3) a tribunal may make any order which a chairman has power to make under these Rules, subject to compliance with any relevant notice or other procedural requirements.

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

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

60.—(1) Any notice given or document sent under these Rules shall (unless a chairman or tribunal orders otherwise) be in writing and may be given or sent –

- (a) by post;
- (b) by fax or other means of electronic communication;
- (c) through a document exchange in accordance with paragraph (6); or
- (d) by personal delivery.

(2) Where a notice or document has been given or sent in accordance with paragraph (1), that notice or document shall, unless the contrary is proved, be taken to have been received by the party to whom it is addressed –

- (a) in the case of a notice or document given or sent by post, on the day on which the notice or document would be delivered in the ordinary course of post;
- (b) in the case of a notice or document transmitted by fax or other means of electronic communication, on the day on which the notice or document is transmitted;
- (c) in the case of a notice or document which is left at a document exchange in accordance with paragraph (6), on the second business day following the day on which it is left; and
- (d) in the case of a notice or document delivered in person, on the day on which the notice or document is delivered.

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(a) 1998 c. 47

(3) All notices and documents required by these Rules to be presented to the Secretary or the Office of the Tribunals, other than a claim, shall be presented at the Office of the Tribunals or such other office as notified by the Secretary to the parties.

(4) All notices and documents required or authorised by these Rules to be sent or given to any person listed below may be sent to or delivered at –

- (a) in the case of a notice or document directed to the Department in proceedings to which it is not a party and which are brought under Article 205 of the Employment Rights Order, 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 any other 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 rule 51), 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;
- (c) in the case of a notice or document directed to the Attorney General for Northern Ireland under rule 56, the Attorney General's Chambers, 9 Buckingham Gate, London, SW1E 7JP;
- (d) in the case of a notice or document directed to a court, the office of the clerk of the court;
- (e) in the case of a notice or document directed to a party –
  - (i) the address specified in the claim or response to which notices and documents are to be sent, or in a notice under paragraph (5); 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;
- (f) 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 taken to have been sent or given to that party.

(5) A party may at any time by notice to the Office of the Tribunals 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 or transmitted.

(6) 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.

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

(8) 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.

(9) Copies of every document sent to the parties under rule 29, 30 or 32 shall in the case of proceedings under the Equal Pay Act, the Sex Discrimination Order, the Sex Discrimination (Northern Ireland) Order 1988(a), the Disability Discrimination Act, the Race Relations Order or the Sexual Orientation Regulations, be sent to the Equality Commission for Northern Ireland.

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

## INDUSTRIAL TRIBUNALS (NATIONAL SECURITY) RULES OF PROCEDURE

**Application of Schedule 2**

1.—(1) The rules in this Schedule only apply to national security proceedings or proceedings where a power under rule 54(3) of Schedule 1 has been exercised.

(2) The rules in this Schedule modify the rules in Schedule 1 in relation to such proceedings. If there is conflict between the rules contained in this Schedule and those in any other Schedule, the rules in this Schedule shall prevail.

(3) Any reference in this Schedule to rule 54 is a reference to rule 54 of Schedule 1.

**Notification of national security proceedings**

2. When proceedings before an industrial tribunal become national security proceedings the Secretary shall inform the parties of that fact in writing as soon as practicable.

**Responding to a claim**

3.—(1) If before the expiry of the period for entering the response –

(a) a direction of the Secretary of State under rule 54(1)(b) (exclusion of claimant) applicable to this stage of the proceedings is given; or

(b) the Secretary of State has informed the Secretary in accordance with rule 54(3) that he wishes to address the tribunal or chairman with a view to the tribunal or chairman making an order under rule 54(2) applicable to this stage of the proceedings to exclude the claimant,

rule 4(4)(d) (grounds for the response) of Schedule 1 shall not apply and paragraphs (2) and (3) shall apply instead.

(2) In a case falling within paragraph (1)(b), if the tribunal or chairman decides not to make an order under rule 54(2), the respondent shall within 28 days of the decision present to the Office of the Tribunals the written grounds on which he resists the claim. On receiving the written grounds the Secretary shall send a copy of them to all other parties and they shall be treated as part of the response.

(3) In a case falling within paragraph (1)(b) where the tribunal or chairman makes the order, or in a case falling within paragraph (1)(a), the respondent shall within 44 days of the direction or order being made, present to the Office of the Tribunals (and, where applicable, to the special advocate) the written grounds on which he resists the claim and they shall be treated as part of the response.

(4) The time limits in paragraphs (2) and (3) may be extended if it is just and equitable to do so and if an application is presented to the Office of the Tribunals before the expiry of the relevant time limit. The application must explain why the respondent cannot comply with the time limit.

**Serving of documents by the Secretary**

4.—(1) The Secretary shall not send a copy of the response or grounds for the response to any person excluded from all or part of the proceedings by virtue of a direction or order given or made under rule 54.

(2) Where the Secretary of State has informed the Secretary in accordance with rule 54(3) that he wishes to address the tribunal or chairman with a view to an order being made under rule 54(2)(a) to exclude the claimant's representative from all or part of the proceedings, the Secretary shall not at any time before the tribunal or chairman has considered the Secretary of State's representations, send a copy of the response or the grounds for the response to any person who may be excluded from all or part of the proceedings by such an order if it were made.

**Default judgement**

5. Rule 8(1) (default judgements) of Schedule 1 shall apply in relation to the time limit for presenting a response, but it shall not apply in relation to the time limits in paragraphs (2) and (3) of rule 3 in this Schedule.

**Witness orders and discovery of documents**

6.—(1) Where –

(a) the Secretary of State has issued a direction or the tribunal or a chairman has made an order under rule 54 to exclude a claimant or his representative from all or part of the proceedings; and

- (b) a chairman or the tribunal is considering whether to make, or has made, an order described in rule 10(2)(c) or (d) of Schedule 1 (requiring a person to attend and give evidence or to produce documents) or under rule 7 of Schedule 4 or rule 6 of Schedule 5,

the Secretary of State (whether or not he is a party to the proceedings) may make an application to the tribunal or chairman objecting to the imposition of a requirement described in rule 10(2)(c) or (d) of Schedule 1 or under Schedule 4 or 5. If such an order has been made the Secretary of State may make an application to vary or set aside the order.

(2) The tribunal or chairman shall hear and determine the Secretary of State's application in private and the Secretary of State shall be entitled to address the tribunal or chairman. The application shall be made by notice to the Secretary and the Secretary shall give notice of the application to all parties.

#### **Case management discussions and pre-hearing reviews**

7.—(1) Rule 14(4) (hearings – general) of Schedule 1 shall be modified in accordance with paragraph (2).

(2) In proceedings in which a special advocate has been appointed in respect of the claimant, at case management discussions and pre-hearing reviews the claimant shall not have the right to advance oral argument, but oral argument may be advanced on the claimant's behalf by the special advocate.

#### **Special advocate**

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

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

(2) A special advocate shall –

- (a) have a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
- (b) be an advocate or solicitor admitted in Scotland; or
- (c) be a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.

(3) Where the excluded person is the claimant, he shall be permitted to make a statement to the tribunal or chairman 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, chairman and the respondent) on any matter contained in the grounds for the response referred to in rule 3(3);
- (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 or chairman sat in private in accordance with a direction or an order given or made under rule 54.

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

- (a) on any matter contained in the grounds for the response referred to in rule 3(3); or
- (b) on any matter discussed or referred to during any part of the proceedings in which the tribunal or chairman sat in private in accordance with a direction or an order given or made under rule 54.

(6) An application under paragraph (5) shall be made in writing to the Office of the Tribunals and shall include the title of the proceedings and the grounds for the application.

(7) The Secretary shall notify the Secretary of State of an application under paragraph (5) and the Secretary of State shall be entitled to address the tribunal or chairman on the application.

(8) In these Rules and those in Schedule 1, in any case in which a special advocate has been appointed to represent the interests of the claimant 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 following references to “party” or “parties” shall not include the special advocate –

- (a) regulation 5(3);



- (b) in Schedule 1, rules 2(2)(b), 9, 10(2)(r), 10(3), all references in rule 11(4) save that in rule 11(4)(c), 11(5), 18(7), 20, 22, 23, 27(3), 27(5), 29(3), 30(6)(f), 33(1), 34(2), all references in rule 38 save that in rule 38(10), 40, 41, all references in rule 42 save that in rule 42(8), 44 to 48, 51, 54(1), the first reference in rule 54(3), the first reference in rule 56(2), 60(3), (4)(a) and (b), (8);
- (c) in Schedule 5, rules 4(b), 5(5) and 9; and
- (d) in Schedule 6, rule 3(b).

### **Hearings**

9.—(1) Any hearing of or in connection with a claim shall, subject to any direction of the Secretary of State or order of a tribunal or chairman under rule 54 that all or part of the proceedings are to take place in private and subject to rule 16 of Schedule 1, take place in public.

(2) Subject to any direction of the Secretary of State or order of a tribunal or chairman under rule 54, a party shall be entitled to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal at a hearing under rule 26 of Schedule 1.

### **Reasons in national security proceedings**

10.—(1) This rule applies to written reasons given under rule 30 of Schedule 1 for a decision or order made by the tribunal or chairman in national security proceedings.

(2) Before the Secretary sends a copy of the written reasons (“the full written reasons”) to any party, or enters them in the Register under rule 32 of Schedule 1, he shall send a copy of the full written reasons to the Secretary of State.

(3) If the Secretary of State considers it expedient in the interests of national security and he has given a direction or the tribunal or a chairman has made an order under rule 54 in those proceedings, the Secretary of State may –

- (a) direct the tribunal or chairman that the full written reasons shall not be disclosed to persons specified in the direction, and to prepare a further document (“the edited reasons”) setting out the reasons for the decision or order, but with the omission of such of the information as is specified in the direction;
- (b) direct the tribunal or chairman that the full written reasons shall not be disclosed to persons specified in the direction, but that no further document setting out the tribunal or chairman’s reasons should be prepared.

(4) Where the Secretary of State has directed the tribunal or chairman in accordance with paragraph (3)(a), the edited reasons shall be signed by the chairman and initialled in each place where an omission has been made.

(5) Where a direction has been made under paragraph (3)(a), the Secretary shall –

- (a) send a copy of the edited reasons referred to in paragraph (3)(a) to any person specified in the direction and to the persons listed in paragraph (7);
- (b) enter the edited reasons in the Register, but omit from the Register the full written reasons; and
- (c) send a copy of the full written reasons to the persons listed in paragraph (7).

(6) Where a direction has been made under paragraph (3)(b), the Secretary shall send a copy of the full written reasons to the persons listed in paragraph (7), but he shall not enter the full written reasons in the Register.

(7) The persons to whom full written reasons should be sent in accordance with paragraph (5) or (6) are –

- (a) the respondent;
- (b) the claimant or the claimant’s representative if they were not specified in the direction made under paragraph (3);
- (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.

### **Correction of written reasons**

11. Where written reasons (whether “full” or “edited”) have been omitted from the Register in accordance with rule 10 and they are corrected by certificate under rule 37 of Schedule 1, the Secretary shall send a copy of the corrected reasons to the same persons who had been sent the reasons in accordance with rule 10.

## Review of decisions

12. In rule 34(3) of Schedule 1 (review of other decisions), the reference in sub-paragraph (c) to decisions being made in the absence of a party does not include reference to decisions being made in the absence of a party where this is done in accordance with a direction given or an order made under rule 54.

## SCHEDULE 3

Regulation 12(3)(a)

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

#### General

1. The rules in this Schedule shall only apply in proceedings involving an equal value claim and they modify and supplement the rules in Schedule 1. If there is conflict between Schedule 1 and this Schedule, the provisions of this Schedule shall prevail.

#### General power to manage proceedings

2.—(1) In addition to the power to make orders described in rule 10 of Schedule 1, the tribunal or chairman shall have power (subject to rules 3(3) and 6(4)) to make the following orders –

- (a) the standard orders set out in rules 4 or 7, with such addition to, omission or variation of those orders (including specifically variations as to the periods within which actions are to be taken by the parties) as the chairman or tribunal considers is appropriate;
- (b) that no new facts shall be admitted in evidence by the tribunal unless they have been disclosed to all other parties in writing before a date specified by the tribunal (unless it was not reasonably practicable for a party to have done so);
- (c) that the parties may be required to send copies of documents or provide information to the other parties and to the independent expert;
- (d) that the respondent is required to grant the independent expert access to his premises during a period specified by the tribunal or chairman in order for the independent expert to conduct interviews with persons identified as relevant by the independent expert;
- (e) when more than one expert is to give evidence in the proceedings, that those experts present to the tribunal a joint statement of matters which are agreed between them and those matters on which they disagree; and
- (f) where proceedings have been joined, that lead claimants be identified.

(2) Any reference in Schedule 1 or 2 to an order made under rule 10 of Schedule 1 shall include reference to an order made in accordance with this Schedule.

#### Conduct of stage 1 equal value hearing

3.—(1) When in an equal value claim there is a dispute as to whether any work is of equal value as mentioned in section 1(2)(c) of the Equal Pay Act(a), the tribunal shall conduct a “stage 1 equal value hearing” in accordance with both this rule and the rules applicable to pre-hearing reviews in Schedule 1.

(2) Notwithstanding rule 18(1) and (3) of Schedule 1, a stage 1 equal value hearing shall be conducted by a tribunal composed in accordance with Article 6(1) of the Industrial Tribunals Order.

(3) At the stage 1 equal value hearing the tribunal shall –

- (a) where section 2A(2A) of the Equal Pay Act(b) applies, strike out the claim (or the relevant part of it) if, in accordance with section 2A(2A) of that Act, the tribunal must determine that the work of the claimant and the comparator are not of equal value;
- (b) decide, in accordance with section 2A(1) of the Equal Pay Act, either that –
  - (i) the tribunal shall determine the question; or
  - (ii) it shall require a member of the panel of independent experts to prepare a report with respect to the question,
- (c) subject to rule 4 and with regard to the indicative timetable, make the standard orders for the stage 1 equal value hearing as set out in rule 4;

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(a) Section 1(2)(c) was inserted by S.R. 1984 No. 16, regulation 2(1)

(b) Section 2A was inserted by S.R. 1984 No. 16, regulation 3 and amended by S.R. 1996 No. 465, regulation 2 and S.R. 2005 No. 145, regulation 2

- (d) if the tribunal has decided to require an independent expert to prepare a report on the question, require the parties to copy to the independent expert all information which they are required by an order to disclose or agree between each other;
- (e) if the tribunal has decided to require an independent expert to prepare a report on the question, fix a date for the stage 2 equal value hearing, having regard to the indicative timetable;
- (f) if the tribunal has not decided to require an independent expert to prepare a report on the question, fix a date for the hearing under rule 26 of Schedule 1, having regard to the indicative timetable; and
- (g) consider whether any further orders are appropriate.

(4) Before a claim or part of one is struck out under paragraph (3)(a), the Secretary shall send notice to the claimant giving him the opportunity to make representations to the tribunal as to whether the evaluation contained in the study in question falls within paragraph (a) or (b) of section 2A(2A) of the Equal Pay Act. The Secretary shall not be required to send a notice under this paragraph if the claimant has been given an opportunity to make such representations orally to the tribunal as to why such a decision should not be issued.

(5) The tribunal may, on the application of a party, hear evidence upon and permit the parties to address it upon the issue contained in section 1(3)(a) of the Equal Pay Act (defence of a genuine material factor) before determining whether to require an independent expert to prepare a report under paragraph (3)(b)(ii).

(6) When the Secretary gives notice to the parties of the stage 1 equal value hearing under rule 14(4) of Schedule 1, he shall also give the parties notice of the matters which the tribunal shall and may consider at that hearing which are described in paragraphs (3) and (5) and he shall give the parties notice of the standard orders in rule 4.

(7) The tribunal's power to strike out the claim or part of it under paragraph (3)(a) is in addition to powers to strike out a claim under rule 18(7) of Schedule 1.

#### **Standard orders for stage 1 equal value hearing**

4.—(1) At a stage 1 equal value hearing a tribunal shall, unless it considers it inappropriate to do so and subject to paragraph (2), order that –

- (a) before the end of the period of 14 days after the date of the stage 1 equal value hearing the claimant shall –
  - (i) disclose in writing to the respondent the name of any comparator, or, if the claimant is not able to name the comparator he shall instead disclose such information as enables the comparator to be identified by the respondent; and
  - (ii) identify to the respondent in writing the period in relation to which he considers that the claimant's work and that of the comparator are to be compared;
- (b) before the end of the period of 28 days after the date of the stage 1 equal value hearing –
  - (i) where the claimant has not disclosed the name of the comparator to the respondent under subparagraph (a), if the respondent has been provided with sufficient detail to be able to identify the comparator, he shall disclose in writing the name of the comparator to the claimant;
  - (ii) the parties shall provide each other with written job descriptions for the claimant and any comparator;
  - (iii) the parties shall identify to each other in writing the facts which they consider to be relevant to the question;
- (c) the respondent is required to grant access to the claimant and his representative (if any) to his premises during a period specified by the tribunal or chairman in order for him or them to interview any comparator;
- (d) the parties shall before the end of the period of 56 days after the date of the stage 1 equal value hearing present to the tribunal a joint agreed statement in writing of the following matters –
  - (i) job descriptions for the claimant and any comparator;
  - (ii) facts which both parties consider are relevant to the question;
  - (iii) facts on which the parties disagree (as to the fact or as to the relevance to the question) and a summary of their reasons for disagreeing;
- (e) the parties shall, at least 56 days prior to the hearing under rule 26 of Schedule 1, disclose to each other, to any independent or other expert and to the tribunal written statements of any facts on which they intend to rely in evidence at that hearing; and

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(a) Section 1(3) was modified by S.R. 1984 No. 16, regulation 2(2)

(f) the parties shall, at least 28 days prior to the hearing under rule 26 of Schedule 1, present to the tribunal a statement of facts and issues on which the parties are in agreement, a statement of facts and issues on which the parties disagree and a summary of their reasons for disagreeing.

(2) Any of the standard orders for the stage 1 equal value hearing may be added to, varied or omitted as the tribunal considers appropriate.

#### **Involvement of independent expert in fact finding**

5.—(1) This rule applies only to proceedings in relation to which the tribunal has decided to require an independent expert to prepare a report on the question.

(2) In proceedings to which this rule applies a tribunal or chairman may if it or he considers it appropriate at any stage of the proceedings order an independent expert to assist the tribunal in establishing the facts on which the independent expert may rely in preparing his report.

(3) Examples of the circumstances in which the tribunal or chairman may make an order described in paragraph (2) may include –

- (a) a party not being legally represented;
- (b) the parties are unable to reach agreement as required by an order of the tribunal or chairman;
- (c) the tribunal or chairman considers that insufficient information may have been disclosed by a party and this may impair the ability of the independent expert to prepare a report on the question;
- (d) the tribunal or chairman considers that the involvement of the independent expert may promote fuller compliance with orders made by the tribunal or a chairman.

(4) A party to proceedings to which this rule applies may make an application under rule 11 of Schedule 1 for an order under paragraph (2).

#### **Conduct of stage 2 equal value hearing**

6.—(1) This rule applies only to proceedings in relation to which the tribunal has decided to require an independent expert to prepare a report on the question. In such proceedings the tribunal shall conduct a “stage 2 equal value hearing” in accordance with both this rule and the rules applicable to pre-hearing reviews in Schedule 1.

(2) Notwithstanding rule 18(1) and (3) of Schedule 1, a stage 2 equal value hearing shall be conducted by a tribunal composed in accordance with Article 6(1) of the Industrial Tribunals Order.

(3) At the stage 2 equal value hearing the tribunal shall make a determination of facts on which the parties cannot agree which relate to the question and shall require the independent expert to prepare his report on the basis of facts which have (at any stage of the proceedings) either been agreed between the parties or determined by the tribunal (referred to as “the facts relating to the question”).

(4) At the stage 2 equal value hearing the tribunal shall –

- (a) subject to rule 7 and having regard to the indicative timetable, make the standard orders for the stage 2 equal value hearing as set out in rule 7;
- (b) make any orders which it considers appropriate; and
- (c) fix a date for the hearing under rule 26 of Schedule 1, having regard to the indicative timetable.

(5) Subject to paragraph (6), the facts relating to the question shall, in relation to the question, be the only facts on which the tribunal shall rely at the hearing under rule 26 of Schedule 1.

(6) At any stage of the proceedings the independent expert may make an application to the tribunal for some or all of the facts relating to the question to be amended, supplemented or omitted.

(7) When the Secretary gives notice to the parties and to the independent expert of the stage 2 equal value hearing under rule 14(4) of Schedule 1, he shall also give the parties notice of the standard orders in rule 7 and draw the attention of the parties to paragraphs (4) and (5).

#### **Standard orders for stage 2 equal value hearing**

7.—(1) At a stage 2 equal value hearing, a tribunal shall, unless it considers it inappropriate to do so and subject to paragraph (2), order that –

- (a) by a date specified by the tribunal (with regard to the indicative timetable) the independent expert shall prepare his report on the question and shall (subject to rule 13) have sent copies of it to the parties and to the tribunal; and
- (b) the independent expert shall prepare his report on the question on the basis of the facts relating to the question and no other facts which may or may not relate to the question.

(2) Any of the standard orders for the stage 2 equal value hearing may be added to, varied or omitted as the tribunal considers appropriate.

### **The hearing**

8.—(1) In proceedings in relation to which an independent expert has prepared a report, unless the tribunal determines that the report is not based on the facts relating to the question, the report of the independent expert shall be admitted in evidence in those proceedings.

(2) If the tribunal does not admit the report of an independent expert in accordance with paragraph (1), it may determine the question itself or require another independent expert to prepare a report on the question.

(3) The tribunal may refuse to admit evidence of facts or hear argument as to issues which have not been disclosed to the other party as required by the rules in this Schedule and in Schedule 1 or any order made under them, unless it was not reasonably practicable for the party to have so complied.

### **Duties and powers of the independent expert**

9.—(1) When a tribunal requires an independent expert to prepare a report with respect to the question or an order is made under rule 5(2), the Secretary shall inform that independent expert of the duties and powers he has under this rule.

(2) The independent expert shall have a duty to the tribunal to –

- (a) assist it in furthering the overriding objective in regulation 3;
- (b) comply with the requirements of the rules in this Schedule and in Schedule 1 and any orders made by the tribunal or a chairman in relation to the proceedings;
- (c) keep the tribunal informed of any delay in complying with any order in the proceedings with the exception of minor or insignificant delays in compliance;
- (d) comply with any timetable imposed by the tribunal or chairman in so far as this is reasonably practicable;
- (e) inform the tribunal or a chairman on request by it or him of progress in the preparation of the independent expert's report;
- (f) prepare a report on the question based on the facts relating to the question and (subject to rule 13) send it to the tribunal and the parties; and
- (g) make himself available to attend hearings in the proceedings.

(3) The independent expert may make an application for any order or for a hearing to be held as if he were a party to the proceedings.

(4) At any stage of the proceedings the tribunal may, after giving the independent expert the opportunity to make representations, withdraw the requirement on the independent expert to prepare a report. If it does so, the tribunal may itself determine the question, or it may determine that a different independent expert should be required to prepare the report.

(5) When paragraph (4) applies the independent expert who is no longer required to prepare the report shall provide the tribunal with all documentation and work in progress relating to the proceedings by a date specified by the tribunal. Such documentation and work in progress must be in a form which the tribunal is able to use. Such documentation and work in progress may be used in relation to those proceedings by the tribunal or by another independent expert.

(6) When an independent expert has been required to prepare a report in proceedings the Secretary shall give the independent expert notice of all hearings, orders or decisions in those proceedings as if the independent expert were a party to those proceedings and when these Rules require a party to provide information to another party, such information shall also be provided to the independent expert.

### **Use of expert evidence**

10.—(1) Expert evidence shall be restricted to that which, in the opinion of the tribunal, is reasonably required to resolve the proceedings.

(2) An expert shall have a duty to assist the tribunal on matters within his expertise. This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

(3) No party may call an expert or put in evidence an expert's report without the permission of the tribunal. No expert report shall be put in evidence unless it has been disclosed to all other parties and any independent expert at least 28 days prior to the hearing under rule 26 of Schedule 1.

(4) In proceedings in which an independent expert has been required to prepare a report on the question, the tribunal shall not admit evidence of another expert on the question unless such evidence is

based on the facts relating to the question. Unless the tribunal considers it inappropriate to do so, any such expert report shall be disclosed to all parties and to the tribunal on the same date on which the independent expert is required to send his report to the parties and to the tribunal.

(5) If an expert (other than an independent expert) does not comply with these Rules or an order made by the tribunal or a chairman, the tribunal may order that the evidence of that expert shall not be admitted.

(6) Where two or more parties wish to submit expert evidence on a particular issue, the tribunal may order that the evidence on that issue is to be given by one joint expert only. When such an order has been made, if the parties wishing to instruct the joint expert cannot agree who should be the expert, the tribunal may select the expert.

### **Written questions to experts**

11.—(1) Where any expert (including an independent expert) has prepared a report, a party or any other expert (including an independent expert) involved in the proceedings may put written questions about the report to the expert who has prepared the report.

(2) Unless the tribunal or chairman agrees otherwise, written questions under paragraph (1) –

(a) may be put once only;

(b) must be put within 28 days of the date on which the parties were sent the report;

(c) must be for the purpose only of clarifying the factual basis of the report; and

(d) must be copied to all other parties and experts involved in the proceedings at the same time as they are sent to the expert who prepared the report.

(3) When written questions have been put to an expert in accordance with paragraph (2) he shall answer those questions within 28 days of receiving them.

(4) An expert's answers to questions put in accordance with paragraph (2) shall be treated as part of the expert's report.

(5) Where a party has put a written question in accordance with this rule to an expert instructed by another party and the expert does not answer that question, or does not do so within 28 days, the tribunal may order that the party instructing the expert may not rely on the evidence of that expert.

### **Procedural matters**

12.—(1) In proceedings in which an independent expert has been required to prepare a report, the Secretary shall send him notices and inform him of any hearing, application, order or decision in those proceedings as if he were a party to those proceedings.

(2) For the avoidance of doubt, any requirement in this Schedule to hold a stage 1 or a stage 2 equal value hearing does not preclude holding more than one of each of those types of hearing or other hearings from being held in accordance with Schedule 1.

(3) Any power conferred on a chairman in Schedule 1 may (subject to the provisions of this Schedule) be carried out by a tribunal or a chairman in relation to proceedings to which this Schedule applies.

### **National security proceedings**

13.—(1) In equal value cases which are also national security proceedings, if a tribunal has required an independent expert to prepare a report on the question, the independent expert shall send a copy of the report to the tribunal and shall not send it to the parties. In such proceedings if written questions have been put to the independent expert under rule 11, the independent expert shall send any answers to those questions to the tribunal and not to the parties.

(2) Before the Secretary sends to the parties a copy of a report or answers which have been sent to him by the independent expert under paragraph (1), he shall follow the procedure set out in rule 10 of Schedule 2 as if that rule referred to the independent expert's report or answers (as the case may be) instead of written reasons, except that the independent expert's report or answers shall not be entered on the Register.

(3) If the Secretary of State does not give a direction under rule 10(3) of Schedule 2 within the period of 28 days from the date on which the Secretary of State was sent the report or answers to written questions the Secretary shall send a copy of the independent expert's report or answers to written questions (as the case may be) to the parties.

ANNEX

THE INDICATIVE TIMETABLE

<i>Claims not involving an independent expert</i>	<i>Claims involving an independent expert</i>
↓ <b>Claim</b> 28 days	↓ <b>Claim</b> 28 days
↓ <b>Response</b> 3 weeks	↓ <b>Response</b> 3 weeks
↓ <b>Stage 1 equal value hearing</b> ↓ ↓ ↓ <b>18 weeks</b> ↓ ↓ ↓ <b>Hearing</b> Total 25 weeks	↓ <b>Stage 1 equal value hearing</b> ↓ 10 weeks <b>Stage 2 equal value hearing</b> ↓ 8 weeks <b>Independent expert's report</b> ↓ 4 weeks <b>Written questions</b> ↓ 8 weeks <b>Hearing</b> Total 37 weeks

SCHEDULE 4

Regulation 12(3)(b)

INDUSTRIAL TRIBUNALS (LEVY APPEALS) RULES OF PROCEDURE

*For use only in proceedings on levy appeals*

**Application of Schedule 1**

1. Subject to rules 8 and 9, Schedule 1 shall apply to levy appeals. The rules in this Schedule modify the rules in Schedule 1 in relation to levy appeals. If there is conflict between the rules contained in this Schedule and those in Schedule 1, the rules in this Schedule shall prevail.

**Notice of appeal**

2. A person wishing to appeal an assessment to a levy (the appellant) shall do so by sending to the Board two copies of a notice of appeal which must be substantially in accordance with Form 1 in the Annex to this Schedule, and they must include the grounds of their appeal.

**Action on receipt of appeal**

3.—(1) Subject to rules 4 and 5, the Board shall, within 21 days of receiving the notice of appeal send the following documents to the Office of the Tribunals –

- (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 wishes to submit to the tribunal.
- (2) Failure to comply with any provision of this rule or rule 4 shall not make the appeal invalid.

**Requests for further information**

4.—(1) Subject to rule 5, this rule applies when, on receiving the notice of appeal, the Board considers that it requires further information on the appellant's grounds for the appeal and of any facts relevant to those grounds.

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

(3) The appellant shall send the Board two copies of the further information within 21 days of receiving the notice requesting the information, or within such further period as the Board may allow.

(4) Subject to paragraph (5), within 21 days of receiving the further information the Board shall send the following documents to the Office of the Tribunals –

- (a) the documents listed in rule 3(1);
- (b) a copy of the notice requesting further information;
- (c) any further information which has been provided to the Board; and
- (d) any representations in writing regarding such information which the Board wishes to submit to the tribunal.

(5) If further information is not received by the Board within the time limit, the documents listed in sub-paragraphs (a) and (b) of paragraph (4) shall be sent by the Board to the Office of the Tribunals –

- (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**

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

(2) When an assessment is withdrawn by the Board, it shall notify the Office of the Tribunals and no further action shall be taken in relation to the appeal.

#### **Entry of appeal**

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

- (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 of the appellant;
  - (iv) 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 Industrial Training Order;
- (b) give notice to the appellant and to the Board of the case number of the appeal (which must from then on be referred to in all correspondence relating to the appeal) and of the address to which notices and other communications to the Office of the Tribunals shall be sent;
- (c) give notice to the appellant of the Board's address for service; and
- (d) send to the appellant a copy of any representations in writing that the Board has submitted to the tribunal under rule 3 or 4.

#### **Order for further information**

7.—(1) In any case in which the appellant has not sent to the Board further information which has been requested by the Board in accordance with rule 4, a chairman or tribunal may, on the application of the Board, by notice order the appellant to supply such further information as may be specified in the notice, and the appellant shall send two copies of such information to the Office of the Tribunals within such time as the chairman or tribunal may order.

(2) As soon as is reasonably practicable after receiving the further information from the appellant, the Secretary shall send a copy of the information to the Board.

(3) An order made under paragraph (1) shall be treated as an order made under rule 10 of Schedule 1 for the purposes of rule 13 of Schedule 1 (compliance with orders and practice directions).

#### **Provisions of Schedule 1 which do not apply to levy appeals**

8. The following rules of Schedule 1 shall not apply in relation to levy appeals: rules 1 to 9, 16(1)(c), 18(2)(c) and (e), 20 to 25, 33, 34(1)(a), 34(2), 34(4), 38(4), 39, 42(4), 43, 47, 49 to 53, 55, and 60(4)(a), (8) and (9).

#### **Modification of Schedule 1**

9. Schedule 1 shall be further modified in relation to levy appeals as follows –

- (a) all references in Schedule 1 to a claim or claimant shall be read as references to a levy appeal or to an appellant in a levy appeal respectively and as the context may require;



- (b) in rule 60 (notices, etc.) after paragraph 4(f) insert:
  - “(g) in the case of a notice of an appeal brought under the Industrial Training Order, the Board’s address for service specified in the assessment notice;
  - (h) in the case of any other document directed to the Board, the Board’s address for service;”.

**ANNEX**

**FORM 1**

**INDUSTRIAL TRAINING (NORTHERN IRELAND) ORDER 1984**

**NOTICE OF APPEAL AGAINST AN ASSESSMENT**

**TO:**

**Construction Industry Training Board, 17 Dundrod Road, Crumlin BT29 4SR, Co Antrim**

**AND**

**The Secretary of the Industrial Tribunals and the Fair Employment Tribunal**

I/We<sup>+</sup> ..... of  
 .....  
 .....\*

hereby give notice that I / we<sup>+</sup> appeal to an industrial tribunal under the Industrial Training (Northern Ireland) Order 1984, Article 24, 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<sup>+</sup> appeal are as follows:

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

**Address for service**

All communications regarding the appeal should be addressed to me/us<sup>+</sup> at .....  
 .....\*

and to my/our<sup>+</sup> Solicitor(s)/Agent(s)§,  
 .....at  
 .....\*

Date .....

Signed .....

<sup>+</sup>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.

**SCHEDULE 5**

Regulation 12(3)(c)

**INDUSTRIAL TRIBUNALS (HEALTH AND SAFETY – APPEALS AGAINST IMPROVEMENT AND PROHIBITION NOTICES) RULES OF PROCEDURE**

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

**Application of Schedule 1**

1. Subject to rules 10 and 11, Schedule 1 shall apply to appeals against an improvement notice or a prohibition notice. The rules in this Schedule modify the rules in Schedule 1 in relation to such appeals.

If there is conflict between the rules contained in this Schedule and those in Schedule 1, the rules in this Schedule shall prevail.

#### **Notice of appeal**

2. A person wishing to appeal an improvement notice or a prohibition notice (the appellant) shall do so by sending to the Office of the Tribunals a notice of appeal which must include the following –

- (a) the name and address of the appellant and, if different, an address to which he requires notices and documents relating to the appeal to be sent;
- (b) the date of the improvement notice or prohibition notice appealed against and the address of the premises or the place concerned;
- (c) the name and address of the respondent;
- (d) details of the requirements or directions which are being appealed; and
- (e) the grounds for the appeal.

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

3.—(1) Subject to paragraph (2), the notice of appeal must be sent to the Office of the Tribunals 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 above 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 or was not reasonably practicable for an appeal to be brought within that time.

#### **Action on receipt of appeal**

4. On receiving the 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 of the appellant;
  - (iv) the name of the respondent;
  - (v) the fact that the appeal is an appeal against an improvement or prohibition notice, as the case may be, under Article 26 of the Health and Safety Order<sup>(a)</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 (which must from then on be referred to in all correspondence relating to the appeal) and of the address to which notices and other communications to the Office of the Tribunals shall be sent.

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

5.—(1) When an appeal is brought against a prohibition notice, an application may be made by the appellant under Article 26(2)(b) of the Health and Safety Order for a direction suspending the operation of the prohibition notice until the appeal is determined or withdrawn. The application must be presented to the Office of the Tribunals in writing and shall include –

- (a) the case number of the appeal, or if there is no case number sufficient details to identify the appeal; and
- (b) the grounds on which the application is made.

(2) Upon receiving the application, the Secretary shall, as soon as is practicable after it has been received –

- (a) enter the fact of the application against the entry in the Register relating to the appeal;
- (b) send a copy of the application to the respondent; and
- (c) inform the respondent that he has the opportunity to submit representations in writing if he so wishes, but within a specified period of not less than 7 days.

(3) The chairman shall consider the application and any representations submitted by the respondent, and may –

- (a) order that the operation of the prohibition notice be suspended until the appeal is determined or withdrawn;
- (b) dismiss the appellant's application; or

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(a) Article 26 was modified by S.I. 1984/1159 (N.I. 9), Schedule 4; its interpretation was modified by S.R. 2000 No. 87, regulation 2; S.R. 2000 No. 120, regulation 19; and 2002 c. 8 (N.I.), s. 1

(c) order that the application be determined at a hearing under rule 26 of Schedule 1.

(4) The chairman must give reasons for any decision made under paragraph (3).

(5) A decision made under paragraph (3) shall be treated as a decision which may be reviewed upon the application of a party under rule 34 of Schedule 1.

#### **General power to manage proceedings**

6.—(1) The chairman may at any time on the application of a party, make an order in relation to any matter which appears to him to be appropriate. Such orders may be those listed in rule 10(2) of Schedule 1 (subject to rule 10 below) or such other orders as he thinks fit. Subject to the case management rules in Schedule 1, orders may be issued as a result of a chairman considering the papers before him in the absence of the parties, or at a hearing.

(2) If the parties agree in writing upon the terms of any order to be made by the tribunal or chairman, the chairman may, if he thinks fit, order accordingly.

#### **Appointment of an assessor**

7. The President or the Vice-President may, if he thinks fit, appoint in accordance with Article 26(3) of the Health and Safety Order a person having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal or chairman as an assessor.

#### **Right to withdraw proceedings**

8.—(1) An appellant may withdraw all or part of the appeal at any time. This may be done either orally at a hearing or in writing in accordance with paragraph (2).

(2) To withdraw an appeal or part of one in writing the appellant must inform the Office of the Tribunals in writing of the appeal or the parts of it which are to be withdrawn.

(3) The Secretary shall inform all other parties of the withdrawal. Withdrawal takes effect on the date on which the Office of the Tribunals (in the case of written notifications) or the tribunal or chairman receives notice of it and where the whole appeal is withdrawn proceedings are brought to an end against the respondent on that date and the tribunal or chairman shall dismiss the appeal.

#### **Costs**

9.—(1) A tribunal or chairman may make an order (“a costs order”) that a party (“the paying party”) make a payment in respect of the costs incurred by another party (“the receiving party”).

(2) For the purposes of paragraph (1) “costs” shall mean fees, charges or disbursements incurred by or on behalf of a party in relation to the proceedings.

(3) The amount of a costs order against the paying party can be determined in the following ways –

(a) the tribunal may specify the sum which the paying party must pay to the receiving party, provided that sum does not exceed £10,000;

(b) the parties may agree on a sum to be paid by the paying party to the receiving party and if they do so the costs order shall be for the sum so agreed;

(c) the tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party with the amount to be paid being determined by way of detailed assessment in a 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.

(4) The tribunal or chairman may have regard to the paying party’s ability to pay when considering whether it or he shall make a costs order or how much that order should be.

(5) For the avoidance of doubt, the amount of a costs order made under either paragraph (3)(b) or (c) may exceed £10,000.

#### **Provisions of Schedule 1 which do not apply to appeals against improvement notices or prohibition notices**

10. The following rules in Schedule 1 shall not apply in relation to appeals against improvement and prohibition notices: rules 1 to 9, 10(1), 10(2)(g), (i), (k), (l) and (r), 12, 13, 16(1)(c), 18(2)(c) and (e), 18(8), 20 to 25, 29(3), 33, 34(1)(a), 34(2), 38 to 47, 49 to 53, 55, and 60(4)(a), (8) and (9). All references in Schedule 1 to the rules listed in this rule shall have no effect in relation to an appeal against an improvement notice or a prohibition notice.

### **Modification of Schedule 1**

11. Schedule 1 shall be further modified so that all references in Schedule 1 to a claim shall be read as references to a notice of appeal or to an appeal against an improvement notice or a prohibition notice, as the context may require, and all references to the claimant shall be read as references to the appellant in such an appeal.

## **SCHEDULE 6**

Regulation 12(3)(d)

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

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

### **Application of Schedule 1**

1. Subject to rules 4 and 5, Schedule 1 shall apply to appeals against a non-discrimination notice. The rules in this Schedule modify the rules in Schedule 1 in relation to such appeals. If there is conflict between the rules contained in this Schedule and those in Schedule 1, the rules in this Schedule shall prevail.

### **Notice of appeal**

2. A person wishing to appeal a non-discrimination notice (the appellant) shall do so by sending to the Office of the Tribunals a notice of appeal which must be in writing and must include the following –

- (a) the name and address of the appellant and, if different, an address 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) details of the requirements which are being appealed; and
- (e) the grounds for the appeal.

### **Action on receipt of appeal**

3. On receiving the 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 of the appellant;
  - (iv) the name of the respondent;
  - (v) the fact that the appeal is an appeal against a non-discrimination notice under Article 68(1)(a) of the Sex Discrimination Order, Article 56(1)(a) of the Race Relations Order or paragraph 10(1) and (2)(a) of Schedule 1 to the Disability Order, 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 (which must from then on be referred to in all correspondence relating to the appeal) and of the address to which notices and other communications to the Office of the Tribunals shall be sent.

### **Provisions of Schedule 1 which do not apply to appeals against non-discrimination notices**

4. The following rules in Schedule 1 shall not apply in relation to appeals against a non-discrimination notice: rules 1 to 9, 16(1)(c), 18(2)(c) and (e), 20 to 24, 33, 34(1)(a), 34(2), 34(4), 38(4), 39, 42(4), 43, 47, 49 to 53, 55, and 60(4)(a), (8) and (9). All references in Schedule 1 to the rules listed in this rule shall have no effect in relation to an appeal against a non-discrimination notice.

### **Modification of Schedule 1**

5. Schedule 1 shall be further modified so that all references in Schedule 1 to a claim shall be read as references to a notice of appeal or to an appeal against a non-discrimination notice, as the context may require, and all references to the claimant shall be read as references to the appellant in such an appeal.

## 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) 2004 as amended. They have been drafted in simpler language and have been re-numbered and re-ordered. In addition to minor and drafting amendments and the updating of statutory and other references, these Regulations make the following changes of substance.

Regulation 9 gives the President power to make practice directions.

Regulation 10 empowers the Department for Employment and Learning to prescribe forms which are to be used by claimants and respondents in proceedings before an industrial tribunal. The prescribed forms do not have to be used in relation to the proceedings listed in regulation 10(3).

Regulation 11 specifies the manner in which the time limits described in the Schedules to the Regulations are to be interpreted.

Regulation 12 provides that Schedule 1 to the Regulations is to apply to all proceedings before an industrial tribunal. However Schedule 1 is modified by Schedules 2 to 6 in relation to proceedings to which each of those Schedules apply respectively.

Regulation 13 provides that details of claims, appeals, applications, decisions and their associated written reasons are to be entered on the public register.

Regulation 15 makes transitional provision in relation to proceedings which were commenced prior to 3rd April 2005. The Regulations apply to all proceedings commenced on or after that date.

Schedule 1 to the Regulations introduces some new terminology such as “claim”, “claimant”, “response”, “case management discussion” and “default judgement”.

Rules 1 to 3 of Schedule 1 provide that, from 1st October 2005, a claim should be presented using a prescribed form. The provision of certain information (“the required information”) is mandatory if the claim is to be accepted and allowed to proceed. Much of the required information is designed to establish whether the statutory disciplinary and grievance procedures under the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004 are applicable and have been followed.

Rule 4 of Schedule 1 provides that the respondent has 28 days from the date on which he was sent the claim in order to present his response. That time limit may be extended if an application to do so is made before the time limit has expired. As from 1st October 2005 a response should be presented using a prescribed form.

Rule 6 of Schedule 1 provides that the response will not be accepted if the required information in relation to it has not been provided.

Rule 7 of Schedule 1 sets out the details of any counterclaim which must be provided and it allows a chairman to establish the procedure which is to apply to a counterclaim in particular proceedings. Procedure in relation to counterclaims generally may be provided for by practice direction.

Rule 8 of Schedule 1 introduces default judgments where no response has been accepted in proceedings and the time limit for entering the response has expired.

Rules 10 to 13 of Schedule 1 describe the tribunal’s case management powers and the procedure for making applications in proceedings.

Rules 14 to 19 of Schedule 1 describe the different types of hearing which may be held, how such hearings are to be conducted and the orders which may be made at different types of hearings.

Rules 22 to 24 of Schedule 1 provide that, in relation to the majority of proceedings brought before industrial tribunals, there shall be a fixed period of conciliation of either “short” or “standard” length. Rule 23 makes provision for the early termination of such conciliation periods in certain circumstances.

Rule 25 of Schedule 1 establishes the procedure to be followed in order to withdraw a claim.

Rule 26 of Schedule 1 describes a hearing held to determine an outstanding procedural or substantive issue or dispose of the proceedings.

Rule 28 of Schedule 1 describes when orders and decisions may be made. Rule 29 specifies the matters which are to be included in a decision. Rule 30 sets out the circumstances in which it is possible to obtain reasons for a decision.

Rules 33 to 36 of Schedule 1 establish new procedures for reviewing certain decisions made by a tribunal or chairman.

Rules 38 to 41 of Schedule 1 describe the circumstances in which a costs order may be made. Such an order may only be made if the party in favour of whom it is made has been legally represented at the relevant time. The relevant time will generally be at the hearing under rule 26. The ability of the paying party to pay the costs order may also be taken into account by the tribunal or chairman.

Rules 42 to 45 of Schedule 1 describe the circumstances in which a preparation time order may be made. A preparation time order may only be made if the party in favour of whom it is made has not been legally represented at the relevant time. The relevant time will generally be at the hearing under rule 26. The ability of the paying party to pay the preparation time order may be taken into account by the tribunal or chairman. Rule 45 sets out how the amount of a preparation time order is calculated.

Rule 46 of Schedule 1 provides that a tribunal or chairman may not make a preparation time order and a costs order in favour of the same party in the same proceedings.

Rule 48 of Schedule 1 introduces wasted costs orders which may be made against representatives. The orders may not however be made against representatives who are not acting in pursuit of profit in relation to those proceedings.

Rule 50 of Schedule 1 provides that a tribunal or chairman may make a temporary restricted reporting order without holding a hearing and sets out the circumstances in which such an order will lapse. Provision is also included that any person may make representations to the tribunal or chairman before a full restricted reporting order is made.

Schedule 2 modifies the application of Schedule 1 in relation to national security proceedings before an industrial tribunal.

Schedule 3 modifies the application of Schedule 1 in relation to equal value claims under the Equal Pay Act (Northern Ireland) 1970. In relation to these claims, the tribunal is provided with new case management powers.

Rule 3 of Schedule 3 provides that where an equal value claim is disputed the tribunal must hold a stage 1 equal value hearing in accordance both with rule 4 of Schedule 3 and with the rules applicable to pre-hearing reviews in Schedule 1. Rule 4 of Schedule 3 sets out the matters to be dealt with at such a hearing. Rule 5 of Schedule 3 sets out the standard orders which may be made at such a hearing. These standard orders may be added to, varied or omitted by the tribunal.

Rule 6 of Schedule 3 provides that in cases where an independent expert has been required by the tribunal to prepare a report, the tribunal must hold a stage 2 equal value hearing. The rule lists the matters to be dealt with at such a hearing. Rule 7 of Schedule 3 sets out the standard orders which may be made, added to, varied or omitted by the tribunal at such a hearing.

Rule 8 of Schedule 3 makes provision for the admitting in evidence at a hearing (held under rule 26 of Schedule 1) of a report prepared by the independent expert. It also provides that the tribunal may refuse to admit at the hearing evidence which has not been disclosed to the other parties before the hearing.

Rule 9 of Schedule 3 sets out the duties and powers of independent experts.

Rule 10 of Schedule 3 provides that other expert evidence may not be admitted in evidence without the permission of the tribunal. It also makes further provision in relation to other expert evidence.

Rule 11 of Schedule 3 establishes a procedure for putting written questions to experts and for the answers to those questions to be treated as part of the expert's report.

Rule 13 of Schedule 3 provides that the procedures contained in rule 10 of Schedule 2 are to apply to independent expert reports and answers to written questions in equal value claims which are also national security proceedings.

The Annex to Schedule 3 sets out an indicative timetable for equal value claims to which the tribunal is to have regard when dealing with certain case management matters.

Schedule 4 modifies the application of Schedule 1 in relation to levy appeals under the Industrial Training (Northern Ireland) Order 1984.

Schedule 5 modifies the application of Schedule 1 in relation to appeals against an improvement or prohibition notice under the Health and Safety at Work (Northern Ireland) Order 1978.

Schedule 6 modifies the application of Schedule 1 in relation to appeals against a non-discrimination notice under either the Sex Discrimination (Northern Ireland) Order 1976, the Race Relations (Northern Ireland) Order 1997 or the Equality (Disability, etc.) (Northern Ireland) Order 2000.

A Regulatory Impact Assessment in respect of these Regulations is available and a copy can be obtained from the Department for Employment and Learning, 39-49 Adelaide Street, Belfast BT2 8FD. A copy has also been placed in the library of the Northern Ireland Assembly.