STATUTORY RULES OF NORTHERN IRELAND

2020 No. 3

EMPLOYMENT

INDUSTRIAL TRIBUNALS

FAIR EMPLOYMENT

The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020

Made - - - -	*3rd January 2020*
Coming into operation -	*27th January 2020*

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The Department for the Economy(**a**), in exercise of the powers conferred by Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978(**b**), Articles 3(1) and (3)(**c**), 6(6)(**d**) and (6A)(**e**), 9(1), (3)(**f**), (3ZA)(**g**), (3A), (3AA), (3AB)(**h**), (3B), (3C)(**i**) and (5), 9A(1) and (2)(**j**), 11(1)(**k**), (2) and (4)(**l**), 12(2), (5), (6) and (7), 12A(1)(**m**), 13(1) and (1B)(**n**), 14(2), 15(**o**), 15A(**p**), 21(**q**), 21A(9)(**r**) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(**s**), and Articles 81(**t**), 82(5)(**u**) and (7), 84(1), (2)(**v**), (2A)(**w**), (2B)(**x**), (3) and (5), 84A(**y**), 84B(1) and (2)(**z**), 85A, 85B(**aa**), 88A(9)(**bb**) and 104(3) of the Fair Employment and Treatment (Northern Ireland) Order 1998(**cc**), and now vested in it(**dd**), makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 and the Rules of Procedure contained in Schedules 1 to 3 may be referred to, respectively as—

(a) the Industrial Tribunals and Fair Employment Tribunal Rules of Procedure 2020;

(b) the Industrial Tribunals (National Security) Rules of Procedure 2020; and

(c) the Industrial Tribunals (Equal Value) Rules of Procedure 2020.

(2) These Regulations shall come into operation on 27th January 2020.

Revocations and consequential amendments

2.—(1) Subject to the savings in regulation 18, the Regulations listed in Part 1 of Schedule 4 are revoked.

(2) The consequential amendments in Part 2 of Schedule 4 shall have effect.

(**a**) 2016 c. 5 (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 3(3) was amended by the Employment Act (Northern Ireland) 2016 (c. 15), section 11.
(**d**) Article 6(6) was amended by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 16(3).
(**e**) Article 6A was inserted by S.I. 1998/1265 (N.I. 8), Article 4(5).
(**f**) Article 9(3)(f) was modified by S.I. 2003/2902 (N.I. 15), Article 3(1).
(**g**) Article 9(3ZA) was inserted by S.I. 2003/2902 (N.I. 15), Article 4.
(**h**) Article 9(3AA) and (3AB) was inserted by 2011 c. 13 (N.I.), section 5.
(**i**) Article 9(3A), (3B) and (3C) was inserted by S.I. 1998/1265 (N.I. 8), Article 3 and Article 9(3A) was modified by S.I. 2003/2902 (N.I. 15), Article 5.
(**j**) Article 9A was inserted by S.I. 2003/2902 (N.I. 15), Article 6.
(**k**) Article 11(1)(a) is amended by S.I. 2003/2902 (N.I. 15), Article 7(2), from a date to be appointed.
(**l**) Article 11(2)(a) was amended by S.R. 2004 No. 157.
(**m**) Article 12 was substituted and Article 12A inserted by S.I. 1999/2790 (N.I. 9), Schedule 8, paragraph 3; Article 12(6) was amended by S.I. 2004/3078 (N.I. 19), Article 17.
(**n**) Article 13(1) was substituted and Article 13(1B) inserted by 2011 c. 13 (N.I.), s. 6(3).
(**o**) 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); Article 15(2) was amended by S.I. 1999/2790 (N.I. 9), Schedule 9.
(**p**) Article 15A was inserted by S.I. 2003/2902 (N.I. 15), Article 8(2).
(**q**) 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.
(**r**) Article 21A was inserted by 2011 c. 13 (N.I.), section 10.
(**s**) S.I. 1996/1921 (N.I. 18).
(**t**) Article 81(1) was amended by S.I. 2003/2902 (N.I. 15), Schedule 5, paragraph 4(3).
(**u**) Article 82(5) was amended by 2016 c. 15 (N.I.), section 12.
(**v**) Article 84(2) was amended by S.I. 2003/2902 (N.I. 15), Articles 9(2), 13(2) and 14(2) and Schedule 6.
(**w**) Article 84(2A) was inserted by S.I. 2003/2902 (N.I. 15), Article 9(1).
(**x**) Article 84(2B) was inserted by S.I. 2003/2902 (N.I. 15), Article 10(1).
(**y**) Article 84A was inserted by S.I. 2003/2902 (N.I. 15), Article 12.
(**z**) Article 84B was inserted by S.I. 2003/2902 (N.I. 15), Article 13(1).
(**aa**) Articles 85A and 85B were inserted by S.I. 2003/2902 (N.I. 15), Article 14(1).
(**bb**) Article 88A was inserted by 2011 c. 13 (N.I.), section 14.
(**cc**) S.I. 1998/3162 (N.I. 21).
(**dd**) Functions relevant to these regulations were transferred from the Department for Employment and Learning by S.R. 2016 No. 76, Article 6(1)(c).

Interpretation

3. Except in the Schedules which are subject to the definitions contained in the Schedules, in these Regulations—

"employee panel" means a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employees as it sees fit;

"employer panel" means a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employers as it sees fit;

"employment judge" means one of—

(a) the President;

(b) the Vice-President;

(c) a member of the panel of employment judges,

and in relation to particular proceedings it means the employment judge to whom the proceedings have been referred by the President or the Vice-President;

"Fair Employment and Treatment Order" means the Fair Employment and Treatment (Northern Ireland) Order 1998;

"Fair Employment Tribunal" means the Fair Employment Tribunal for Northern Ireland established in accordance with regulation 5;

"industrial tribunal" means an industrial tribunal established in accordance with regulation 4;

"Industrial Tribunals Order" means the Industrial Tribunals (Northern Ireland) Order 1996;

"national security proceedings" means proceedings in relation to which a direction is given, or an order is made, under rule 91 or 92 of Schedule 1;

"panel of employment judges" means a panel of persons appointed in accordance with regulation 7(1)(a);

"President" means the President of the Industrial Tribunals and the Fair Employment Tribunal appointed under Article 82(1)(a) of the Fair Employment and Treatment Order or the person nominated by the Northern Ireland Judicial Appointments Commission under Article 82(6) of that Order to discharge for the time being the functions of the President;

"Secretary" means a person for the time being appointed to act as the Secretary of the tribunal (and any function of the Secretary may be performed by a person acting with the authority of the Secretary);

"tribunal" means—

(a) any industrial tribunal or Fair Employment Tribunal; and

(b) in relation to particular proceedings, the industrial tribunal or Fair Employment Tribunal to which those proceedings relate;

"tribunal office" means the Office of the Industrial Tribunals and the Fair Employment Tribunal;

"Vice-President" means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal appointed under Article 82(1)(b) of the Fair Employment and Treatment Order or the person nominated by the Northern Ireland Judicial Appointments Commission under Article 82(6) of that Order to discharge for the time being the functions of the Vice-President.

Industrial Tribunals

4. There shall continue to be tribunals known as industrial tribunals, established in accordance with Article 3 of the Industrial Tribunals Order, for the purposes of exercising the jurisdiction conferred on them by or by virtue of that Order or any other statutory provision.

The Fair Employment Tribunal for Northern Ireland

5.—(1) There shall continue to be a tribunal known as the Fair Employment Tribunal for Northern Ireland, established in accordance with Article 81(1) of the Fair Employment and Treatment Order, for the purposes of exercising the jurisdiction conferred on it by that Order or any other statutory provision.

(2) The jurisdiction of the Fair Employment Tribunal shall be exercised by a single tribunal or, if the President or the Vice-President so directs, by two or more tribunals.

(3) Where, under Article 85 of the Fair Employment and Treatment Order, the President or Vice-President has directed that a matter that would otherwise fall to be determined by an industrial tribunal shall be heard and determined by the Fair Employment Tribunal, any function of an industrial tribunal specified in these Regulations and in Schedules 1 to 3 may be carried out by the Fair Employment Tribunal as though it were an industrial tribunal constituted under these Regulations.

Composition of tribunals

6. Tribunals shall consist of three panels of members, namely—

(a) the panel of employment judges;

(b) the employee panel; and

(c) the employer panel.

Appointment of panel members

7.—(1) Members of panels of tribunals shall hold and vacate office in accordance with the terms of their appointment, as specified—

(a) in the case of the panel of employment judges, by the Northern Ireland Judicial Appointments Commission with the agreement of the Department of Justice;

(b) in the case of the employee panel and the employer panel, by the Department,

but no person shall be appointed under paragraph (1)(a) without meeting one of the qualifications in Article 82(2) of the Fair Employment and Treatment Order.

(2) Members of panels may resign from office by written notice to the authority which appointed them under paragraph (1), and any member who ceases to hold office shall be eligible for reappointment.

Specialist panels: specialist knowledge

8. The President or the Vice-President may establish specialist panels consisting of persons from the panel of employment judges, the employee panel and the employer panel for use in proceedings where, in the opinion of the President or the Vice-President, specialist knowledge would be beneficial.

Specialist panels: national security proceedings

9. The President shall select three panels of persons who may act in national security proceedings before the industrial tribunal, namely—

(a) a panel of persons from the panel of employment judges to act as employment judges in such cases;

(b) a panel of persons from the employee panel to act as members in such cases; and

(c) a panel of persons from the employer panel to act as members in such cases.

Composition of individual tribunals: general

10.—(1) Subject to paragraph (2), the President or the Vice-President shall select an employment judge for each tribunal, and that person shall determine proceedings alone.

(2) Where the proceedings are to be determined by a tribunal comprising an employment judge and two other members, the President or the Vice-President, having selected the employment judge under paragraph (1), shall select—

(a) one member from the employee panel and one member from the employer panel; or

(b) one member from either of those panels if the parties consent to Fair Employment Tribunal proceedings being heard and determined by an employment judge and one other member only, or consent under Article 6(1) of the Industrial Tribunals Order.

(3) The President or the Vice-President may select from the appropriate panel a substitute for a member previously selected to hear any proceedings.

(4) This regulation does not apply in relation to national security proceedings before the industrial tribunal (see regulation 12).

Composition of individual tribunals: specialist knowledge

11. Where particular specialist knowledge would, in the opinion of the President or the Vice-President, be beneficial in determining proceedings, selections under regulation 10 may be made from the specialist panels described in regulation 8.

Composition of individual tribunals: national security proceedings

12. Where proceedings before an industrial tribunal or the Fair Employment Tribunal become national security proceedings, the President or the Vice-President shall—

(a) select an employment judge from the panel referred to in regulation 9(a); and

(b) where the proceedings are to be determined by a tribunal comprising an employment judge and two other members, select in addition one member respectively from each of the panels referred to in regulation 9(b) and (c).

Responsibilities of the President and the Vice-President

13.—(1) The President, or in the absence of the President the Vice-President, shall use the resources available to—

(a) secure, so far as practicable, the speedy and efficient disposal of proceedings;

(b) determine the allocation of proceedings between tribunals; and

(c) determine where and when tribunals shall sit.

(2) Subject to Article 82(6) of the Fair Employment and Treatment Order, where the President or the Vice-President is unable to exercise the functions under regulations 5(2) and (3), 10(1), (2) and (3), 12 and paragraph (1)(c) and Articles 17 and 85 of the Fair Employment and Treatment Order, the President or the Vice-President may direct that those functions may be exercised by a person appointed to the panel of employment judges.

Practice directions

14.—(1) The President may make, vary or revoke practice directions about the procedure of the tribunals, including practice directions about the exercise by tribunals of powers under these Regulations or the Schedules.

(2) Practice directions may make different provision for different cases or different types of proceedings.

(3) Any practice direction made, varied or revoked shall be published by the President in an appropriate manner to bring it to the attention of the persons to whom it is addressed.

Power to prescribe

15.—(1) The Department may prescribe—

(a) one or more versions of a form which shall be used by claimants to start proceedings in a tribunal;

(b) one or more versions of a form which shall be used by respondents to respond to a claim before a tribunal; and

(c) that the provision of certain information on the prescribed forms is mandatory.

(2) It is not necessary to use a form prescribed under paragraph (1) if the proceedings are—

(a) referred to a tribunal by a court;

(b) proceedings in which a tribunal will be exercising its appellate jurisdiction; or

(c) proceedings brought by the employer under Article 43 of the Employment Rights (Northern Ireland) Order 1996(**a**).

(3) The Department shall publish the prescribed forms in an appropriate manner to bring them to the attention of prospective claimants, respondents and their advisers.

Register

16.—(1) The Secretary shall maintain a register which shall be accessible to the public without charge at all reasonable hours.

(2) The register, which may be kept by means of a computer, shall contain a copy of all judgments and written reasons required to be entered in the register by the rules in Schedules 1 to 3.

(3) A document purporting to be certified by the Secretary to be a true copy of an entry of a judgment in the register shall, unless the contrary is proved, be sufficient evidence of the document and its contents.

Application of Schedules 1 to 3

17.—(1) Subject to paragraph (2), Schedule 1 applies to all proceedings before a tribunal except where separate rules of procedure made under the provisions of any statutory provision are applicable.

(2) Schedules 2 and 3 apply to modify the rules in Schedule 1 in relation, respectively, to proceedings which are—

(a) national security proceedings;

(b) proceedings which involve an equal value claim (as defined in rule 1 of Schedule 3).

Transitional provisions

18.—(1) Subject to paragraphs (2) to (5), these Regulations and the Rules of Procedure contained in Schedules 1 to 3 apply in relation to all proceedings to which they relate.

(2) Where a claim is started by presenting a completed claim form, in accordance with rule 9(1) of Schedule 1, before 27th February 2020—

(a) rule 9(3)(b) shall not apply;

(b) rule 11(1)(b) shall apply only to a claim form which does not include the information specified in rule 9(3)(a) or (c) and shall not apply to a claim form which does not include the information specified in rule 9(3)(b);

(c) rule 11(1)(c)(iii) shall not apply;

(d) rule 11(2)(b) shall not apply.

(**a**) S.I. 1996/1919 (N.I. 16).

(3) Where the Secretary sends a copy of a tribunal claim to a respondent before 27th January 2020, rules 21 to 23 of Schedule 1 shall not apply to the proceedings and rule 7 of Schedule 1 to the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005(**a**) continues to apply.

(4) Where in accordance with Schedules 4 to 6 of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005, a notice of appeal is presented to a tribunal before 27th January 2020, Schedule 1 shall not apply to the proceedings and Schedule 4, 5 or 6, as appropriate, to those Regulations continues to apply.

(5) Where in accordance with the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005, a notice of appeal is presented under Schedule 2 or a notice of application was presented under Schedule 3 before 27th January 2020, Schedule 1 shall not apply to the proceedings and Schedule 2 or Schedule 3, as appropriate, to those Regulations continues to apply.

Sealed with the Official Seal of the Department for the Economy on 3rd January 2020.

L.S.

Colin Jack
A senior officer of the Department for the Economy

(**a**) S.R. 2005 No. 150.

SCHEDULE 1

Regulation 17(1)

THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2020

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PART 1
INTRODUCTORY AND GENERAL

Interpretation

1.—(1) In these Rules—

"Agency" means the Labour Relations Agency;

"case management order" means an order or decision of any kind in relation to the conduct of proceedings, not including the determination of any issue which would be the subject of a judgment;

"claim" means any proceedings before a tribunal making a complaint;

"claimant" means the person bringing the claim;

"Commission" means the Equality Commission for Northern Ireland;

"complaint" means anything that is referred to as a claim, complaint, reference, application or appeal in any statutory provision which confers jurisdiction on a tribunal;

"disclosure", for the purposes of rules 24 and 27, means stating that a document exists or has existed;

"early conciliation certificate" means a certificate issued by the Agency in accordance with the Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020(**a**);

"early conciliation exemption" means an exemption contained in regulation 3(1) of the Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020;

"early conciliation number" means the unique reference number which appears on an early conciliation certificate;

"electronic communication" has the meaning given to it by section 4(1) of the Electronic Communications (Northern Ireland) Act 2001(**b**);

"employee panel" means a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employees as it sees fit;

"employer panel" means a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employers as it sees fit;

"employee's contract claim" means a claim brought by an employee in accordance with Articles 3 and 7 of the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994(**c**);

"employer's contract claim" means a claim brought by an employer in accordance with Articles 4 and 8 of the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994;

"employment judge" means one of—

(a) the President;

(b) the Vice-President;

(c) a member of the panel of employment judges,

and in relation to particular proceedings it means the employment judge to whom the proceedings have been referred by the President or the Vice-President;

"Employment Rights Order" means the Employment Rights (Northern Ireland) Order 1996(**d**);

"Fair Employment and Treatment Order" means the Fair Employment and Treatment (Northern Ireland) Order 1998;

"Fair Employment Tribunal" means the Fair Employment Tribunal for Northern Ireland established in accordance with regulation 5;

"industrial tribunal" means an industrial tribunal established in accordance with regulation 4;

"Industrial Tribunals Order" means the Industrial Tribunals (Northern Ireland) Order 1996;

"judgment" means a decision made at any stage of the proceedings, but not including a decision under rule 12 or 17 (reconsideration of rejection), which finally determines—

(a) a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs); or

(b) any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, whether a claim should be struck out or a jurisdictional issue);

(**a**) S.R. 2020 No. 2.
(**b**) 2001 c. 9; section 4(1) was amended by 2003 c. 21.
(**c**) S.R. 1994 No. 308.
(**d**) S.I. 1996/1969 (N.I. 16).

"panel of employment judges" means a panel of persons appointed by the Northern Ireland Judicial Appointments Commission meeting any of the qualifications in Article 82(2) of the Fair Employment and Treatment Order;

"prescribed form" means any appropriate form prescribed by the Department in accordance with regulation 15;

"present" means deliver (by any means permitted under rule 82) to the tribunal office;

"President" means the President of the Industrial Tribunals and the Fair Employment Tribunal appointed under Article 82(1)(a) of the Fair Employment and Treatment Order or the person nominated by the Northern Ireland Judicial Appointments Commission under Article 82(6) of that Order to discharge for the time being the functions of the President;

"register" means the register of judgments and written reasons kept in accordance with regulation 16;

"relevant proceedings" means proceedings listed in Article 20(1) of the Industrial Tribunals Order or proceedings under Article 38 of the Fair Employment and Treatment Order;

"respondent" means the person against whom a claim is made;

"Secretary" means a person for the time being appointed to act as the Secretary of the tribunal (and any function of the Secretary may be performed by a person acting with the authority of the Secretary);

"tribunal", unless otherwise specified, means—

(a) any industrial tribunal or Fair Employment Tribunal; and

(b) in relation to particular proceedings, the industrial tribunal or Fair Employment Tribunal to which those proceedings relate;

"tribunal office" means the Office of the Industrial Tribunals and the Fair Employment Tribunal;

"Vice-President" means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal or the person nominated by the Northern Ireland Judicial Appointments Commission under Article 82(6) of the Fair Employment and Treatment Order to discharge for the time being the functions of the Vice-President;

"writing" includes writing delivered by means of electronic communication.

(2) Any reference in the Rules to a tribunal applies to a tribunal comprising of—

(a) an employment judge acting alone;

(b) an employment judge acting with one or two other members.

(3) An order or other decision of the tribunal is either a case management order or a judgment.

Overriding objective

2. The overriding objective of these Rules is to enable tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the tribunal.

Alternative dispute resolution and the role of the Agency

3.—(1) A tribunal shall wherever practicable and appropriate encourage the use by the parties of conciliation or other means of resolving their disputes by agreement.

(2) Where a claim starts relevant proceedings and has not been rejected under rule 11(2), the Secretary may send a copy of all documents, orders, decisions, written reasons and notices to the Agency and shall inform the parties that the services of an Agency conciliation officer are available to them.

(3) Subject to rule 44 (privacy and restrictions on disclosure) and rules 91 and 92 (national security), a representative of the Agency may attend any hearing.

General power to regulate procedure

4. A tribunal, having regard to the principles contained in the overriding objective and any Presidential guidance, and subject to the provisions of these Rules and any practice directions, may regulate its own procedure.

Time

5.—(1) Unless otherwise specified by the tribunal, an act required by these Rules, a practice direction or an order of a tribunal to be done on or by a particular day may be done at any time before midnight on that day. If there is an issue as to whether the act has been done by that time, the party claiming to have done it shall prove compliance.

(2) If the time specified by these Rules, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done before midnight on the next working day. "Working day" means any day except a Saturday, a Sunday or a public holiday(**a**).

(3) Where any act is required to be, 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 response shall be presented within 28 days of the date on which the respondent was sent a copy of the claim: if the claim was sent on 1st May the last day for presentation of the response is 29th May.)

(4) Where any act is required to be, 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 present representations in writing for consideration by a tribunal at a hearing, they shall be presented not less than 7 days before the hearing: if the hearing is fixed for 8th May, the representations shall be presented no later than 1st May.)

(5) Where the tribunal imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(6) Where time is specified by reference to the date when a document is sent to a person by the tribunal, the date when the document was sent shall, unless the contrary is proved, be regarded as the date endorsed on the document as the date of sending or, if there is no such endorsement, the date shown on the letter accompanying the document.

Extending or shortening time

6. A tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.

(**a**) "Public holiday" is defined in s. 39(8) of the Interpretation Act (Northern Ireland) 1954 (c. 33) so as to include Christmas Day, Good Friday, any bank holiday appointed by or under any statutory provision and any day appointed for public thanksgiving or mourning. Schedule 1 of the Banking and Financial Dealings Act 1971 (c. 80) lists the following bank holidays in respect of Northern Ireland: 17th March (or 18th March if 17th is a Sunday); Easter Monday; the last Monday in May; the last Monday in August; 26th December (if it is not a Sunday); and 27th December (if 25th or 26th is a Sunday).

Irregularities and non-compliance

7. A failure to comply with any provision of these Rules (except rule 9(1), 15(1), 21 or 23) or any order of a tribunal (except for an order under rules 33 or 34) does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the tribunal may take such action as it considers just, which may include all or any of the following—

(a) waiving or varying the requirement;

(b) striking out the claim or the response, in whole or in part, in accordance with rule 32;

(c) barring or restricting a party's participation in the proceedings;

(d) awarding costs in accordance with rules 71 to 81.

Presidential guidance

8. The President may publish guidance as to matters of practice and as to how the powers conferred by these Rules may be exercised. Any such guidance shall be published in an appropriate manner to bring it to the attention of claimants, respondents and their advisers. Tribunals must have regard to any such guidance, but they shall not be bound by it.

PART 2

STARTING A CLAIM

Presenting the claim

9.—(1) A claim shall be started by presenting a completed claim form (using a prescribed claim form) to the tribunal office.

(2) A claim may be presented if—

(a) a respondent resides or carries on business in Northern Ireland;

(b) an act or omission complained of took place in Northern Ireland;

(c) the claim relates to a contract under which work is or has been performed partly in Northern Ireland; or

(d) the tribunal has jurisdiction to determine the claim by virtue of a connection with Northern Ireland.

(3) The claim form must include—

(a) the name and address of each claimant and respondent; and

(b) one of the following—

(i) an early conciliation number;

(ii) confirmation that the claim does not start any relevant proceedings; or

(iii) confirmation that an early conciliation exemption applies; and

(c) details describing the basis for the claim.

Multiple claimants

10. Two or more claimants may make their claims on the same claim form if their claims are based on the same set of facts. Where two or more claimants wrongly include claims on the same claim form, this shall be treated as an irregularity falling under rule 7.

Rejection

11.—(1) The Secretary shall refer a claim form to an employment judge if—

(a) it is not made on a prescribed form;

(b) it does not include the information specified in rule 9(3); or

(c) the Secretary considers that the claim, or part of it, may be—

(i) one which the tribunal has no jurisdiction to consider;

(ii) one which includes insufficient information to enable the basis for the claim to be established or is in a form which cannot sensibly be responded to or is otherwise an abuse of process; or

(iii) one which, although starting relevant proceedings—

(aa) confirms that an early conciliation exemption applies where no such exemption applies; or

(bb) records a name or address for the claimant or the respondent differing materially from the name or address recorded for the prospective claimant or the prospective respondent (as the case may be) on the early conciliation certificate to which the early conciliation number relates.

(2) The claim, or part of it, shall be rejected if the employment judge considers that it is of a kind described in paragraph (1), except that the claim shall not be rejected—

(a) if paragraph (1)(a) applies and the employment judge considers that the information provided in the claim form is substantially the same as the information which would have been provided had the prescribed form been used or if the claim relates to the proceedings specified in regulation 15(2);

(b) if paragraph (1)(c)(iii)(bb) applies and the employment judge considers that the disparity between the information provided, respectively, in the claim and the early conciliation certificate is not such as to cast doubt on the identity of the claimant or respondent and that it would not be in the interests of justice to reject the claim.

(3) If the claim is rejected, the rejected claim form shall be returned to the claimant together with a notice of rejection giving the employment judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection.

Reconsideration of rejection

12.—(1) A claimant whose claim has been rejected (in whole or in part) under rule 11 may apply for a reconsideration on the basis that either the decision to reject was wrong or the notified defect can be rectified.

(2) The application shall—

(a) be in writing;

(b) be presented within 14 days of the date that the notice of rejection was sent;

(c) explain why the decision is said to have been wrong or rectify the defect; and

(d) state whether the claimant requests a hearing.

(3) If the claimant does not request a hearing, or an employment judge decides, on considering the application, that the claim shall be accepted in full, the employment judge shall determine the application without a hearing; otherwise the application shall be considered at a hearing attended only by the claimant.

(4) If the employment judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.

(5) If the employment judge decides that the original rejection was wrong, the claim (or part) shall be accepted from the date on which it was presented.

Protected disclosure claims: notification to a regulator

13. If a claim alleges that the claimant has made a protected disclosure within the meaning of Article 67A of the Employment Rights Order, the employment judge may, with the consent of the claimant, direct the Secretary to send a copy of any accepted claim, or part of it, to a regulator

listed in Schedule 1 to the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999.

PART 3

TRIBUNAL'S ACTIONS ON RECEIVING THE CLAIM

Sending claim form to respondents

14. Unless a claim is rejected, the Secretary shall send a copy of the claim form, together with a prescribed response form, to each respondent with a notice which includes information on—

(a) whether any part of the claim has been rejected;

(b) how to submit a response to the claim;

(c) the time limit for doing so;

(d) what will happen if a response is not presented within that time limit; and

(e) the availability of alternative means of resolving the issues raised in the claim, including conciliation.

PART 4

THE RESPONSE TO THE CLAIM

Presenting the response

15.—(1) The response to a claim shall be—

(a) on a prescribed form; and

(b) presented within 28 days of the date that the copy of the claim form was sent to the respondent.

(2) A response form may include the response of more than one respondent if they are responding to a single claim and either—

(a) they all resist the claim on the same grounds and details of those grounds are the same; or

(b) they do not resist the claim.

(3) A response form may include the response to more than one claim if the claims are based on the same set of facts and either—

(a) the respondent resists all of the claims on the same grounds and details of those grounds are the same; or

(b) the respondent does not resist the claims.

Rejection

16.—(1) The Secretary shall refer a response to an employment judge if—

(a) it is not made on a prescribed form;

(b) it does not contain the respondent's full name and address;

(c) it does not indicate whether the respondent wishes to resist any part of the claim and, if the respondent does wish to do so, give the details of the grounds for such resistance; or

(d) it is presented outside the time limit in rule 15 (or any extension of that limit granted within the original limit).

(2) The response shall be rejected if the employment judge considers that it is of a kind described in paragraph (1), except that—

(a) if paragraph (1)(a) applies and the employment judge considers that the information provided in the response is substantially the same as the information which would have been provided had the prescribed form been used, the response shall not be rejected;

(b) if paragraph (1)(b) applies and the employment judge considers that sufficient information is available to enable the respondent's full name and address to be identified and that it would not be in the interests of justice to reject the response, the response shall not be rejected;

(c) if paragraph (1)(d) applies and an application for extension has already been made under rule 18 or the response includes or is accompanied by such an application, the response shall not be rejected pending the outcome of the application.

(3) The Secretary shall return the rejected response to the respondent with a notice of rejection explaining—

(a) why it has been rejected;

(b) what steps may be taken by the respondent, including the need (if appropriate) to apply for an extension of time; and

(c) how to apply for a reconsideration of the rejection.

Reconsideration of rejection

17.—(1) Subject to paragraph (2), a respondent whose response has been rejected under rule 16 may apply for a reconsideration on the basis that—

(a) the decision to reject was wrong; or

(b) the notified defect can be rectified.

(2) Paragraph (1)(b) does not apply in the case of a rejection under rule 16(1)(d).

(3) The application shall—

(a) be in writing;

(b) be presented within 14 days of the date that the notice of rejection was sent;

(c) explain why the decision is said to have been wrong or rectify the defect; and

(d) state whether the respondent requests a hearing.

(4) If the respondent does not request a hearing, or an employment judge decides, on considering the application, that the response shall be accepted in full, the employment judge shall determine the application without a hearing; otherwise the application shall be considered at a hearing attended only by the respondent.

(5) If the employment judge decides that the original rejection was correct but that the defect has been rectified, the response shall be treated as presented on the date that the defect was rectified (but the employment judge may extend time under rule 6).

Applications for extension of time for presenting response

18.—(1) An application for an extension of time for presenting a response shall—

(a) be presented in writing;

(b) be copied to the claimant;

(c) set out the reason why the extension is sought;

(d) except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible; and

(e) if the respondent wishes to request a hearing, include that request.

(2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.

(3) An employment judge may determine the application without a hearing.

(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 19 shall be set aside.

Effect of non-presentation or rejection of response or case not being contested

19.—(1) Where—

(a) the time limit in rule 15 has expired and no response has been presented; or

(b) a response has been received but has been rejected, and no application for a reconsideration under rule 17 is outstanding; or

(c) the respondent has stated that no part of the claim is contested,

the claim shall proceed to early case management under rule 24.

(2) Where paragraph (1) applies, the respondent shall be entitled to notice of any hearings and decisions of the tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the employment judge.

Notification of acceptance

20. Where the response is accepted the Secretary shall send a copy of it to all other parties, and the claim shall proceed to early case management.

PART 5

EMPLOYER'S CONTRACT CLAIMS

Making an employer's contract claim

21. Any employer's contract claim shall be made as part of the response, presented in accordance with rule 15, to a claim which includes an employee's contract claim. An employer's contract claim may be rejected on the same basis as a claimant's claim may be rejected under rule 11, in which case rule 12 shall apply.

Notification of employer's contract claim

22. When the response is sent to the other parties in accordance with rule 20, the Secretary shall notify the claimant that the response includes an employer's contract claim and include information on—

(a) whether any part of the claim has been rejected;

(b) how to submit a response to the claim;

(c) the time limit for doing so; and

(d) what will happen if a response is not presented within that time limit.

Responding to an employer's contract claim

23. A claimant's response to an employer's contract claim shall be presented within 28 days of the date that the response was sent to the claimant. If no response is presented within that time limit, rules 18 and 19 shall apply, and the claim shall proceed to early case management.

PART 6

CASE MANAGEMENT ORDERS AND OTHER POWERS

Early case management

24. As soon as possible after the acceptance of the response or the application of rule 19(1), whichever is the earlier, an employment judge shall review the documents held by the tribunal that are relevant to the claim and shall do one or more of the following:

(a) decide whether a determination can properly be made of the claim, or part of it;

(b) provide a preliminary assessment of the issues to be determined;

(c) explore alternative means of resolving the issues in dispute, including the use of conciliation;

(d) issue any case management order appropriate to furthering the overriding objective including, but not limited to, any order dealing with—

(i) the identification of the issues to be determined;

(ii) the identification of any preliminary issues and consideration of whether they should be dealt with at a preliminary hearing under rule 47 or a final hearing under rule 51;

(iii) the disclosure, exchange and inspection of documents;

(iv) the provision of additional documents and information;

(v) the numbers of witnesses;

(vi) the sequential or simultaneous exchange of witness statements;

(vii) the preparation of documents or hearing;

(viii) limiting the content, length or format of any document or bundle of documents, including a witness statement;

(ix) the timetabling of any orders made; and

(x) the listing of the case for hearing.

Case management orders

25.—(1) The tribunal may at any stage of the proceedings, on its own initiative or on application, make a case management order.

(2) A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.

(3) The particular powers identified in rule 24 or the following rules do not restrict the general power in this rule.

Applications for case management orders

26.—(1) An application by a party for a particular case management order may be made either at a hearing or presented in writing to the tribunal.

(2) Where a party applies in writing and sends a copy of the application to the other parties in accordance with rule 89, the party shall notify the other parties of their rights under paragraph (3).

(3) The other parties may present any comments on or objections to the application within 7 days of receiving the application. If a hearing is due to take place before the expiry of the 7 day period, any comments or objections should be presented as soon as possible before that hearing.

(4) The tribunal may deal with such an application in writing or order that it be dealt with at a preliminary or final hearing.

Documents and evidence

27.—(1) The tribunal may—

(a) order any person in Northern Ireland—

(i) to grant to a party such disclosure, exchange and inspection (including the taking of copies) of documents as might be granted by a county court;

(ii) to disclose information to a party; or

(iii) to attend a hearing to give evidence, produce documents, or produce information;

(b) apply for an order under section 67 of the Judicature (Northern Ireland) Act 1978 compelling the attendance at a hearing of any witness from another part of the United Kingdom or requiring the production by that witness of any document; or

(c) use the procedures for obtaining evidence prescribed in Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

(2) An order containing a requirement described in paragraph (1)(a) shall include the following information (as the case may require)—

(a) that any person who without reasonable excuse fails to comply with the requirement shall be liable on summary conviction to a fine in accordance with Article 9(4) of the Industrial Tribunals Order or Article 84(9) and (10) of the Fair Employment and Treatment Order;

(b) the amount of the current maximum fine; and

(c) that any person who, having been summarily convicted under Article 84(10) of the Fair Employment and Treatment Order, without reasonable excuse continues to fail to comply with the requirement shall be liable on a second or subsequent summary conviction to a continuing fine.

Addition, substitution and removal of parties

28. The tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included.

Other persons

29. The tribunal may permit any person to participate in proceedings, on such terms as may be specified, in respect of any matter in which that person has a legitimate interest.

Lead cases

30.—(1) Where a tribunal considers that two or more claims give rise to common or related issues of fact or law, the tribunal or the President may make an order specifying one or more of those claims as a lead case and staying the other claims ("the related cases").

(2) When the tribunal makes a decision in respect of the common or related issues the Secretary shall send a copy of that decision to each party in each of the related cases and, subject to paragraph (3), that decision shall be binding on each of those parties.

(3) Within 28 days after the date on which the Secretary sent a copy of the decision to a party under paragraph (2), that party may apply in writing for an order that the decision does not apply to, and is not binding on the parties to, a particular related case.

(4) If a lead case is withdrawn before the tribunal makes a decision in respect of the common or related issues, it shall make an order as to—

(a) whether another claim is to be specified as a lead case; and

(b) whether any order affecting the related cases should be set aside or varied.

Consolidation of industrial tribunal and Fair Employment Tribunal proceedings

31. The tribunal may on its own initiative, or on the application of a party, request from the President or the Vice-President a direction under Article 85 of the Fair Employment and Treatment Order that a matter that would otherwise fall to be determined by an industrial tribunal be heard and determined by the Fair Employment Tribunal exercising, for the purposes of that matter, the powers of an industrial tribunal.

Striking out

32.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of any claim or response on any of the following grounds—

(a) that it is frivolous or vexatious or has no reasonable prospect of success;

(b) 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 frivolous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the tribunal;

(d) that it has not been actively pursued;

(e) that the tribunal considers that it is no longer possible to have a fair hearing of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given the opportunity to make representations, either in writing or, if requested by the party or ordered by the tribunal, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 19.

Unless orders

33.—(1) An order may specify that, if it is not complied with by the date specified, the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the parties shall be given written notice confirming what has occurred.

(2) A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing, the tribunal may determine it on the basis of written representations.

(3) Where a response is dismissed under this rule, the effect will be as if no response had been presented, as set out in rule 19.

Deposit orders

34.—(1) Where at a preliminary hearing under rule 48 the tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £500 as a condition of being permitted to continue to take part in the proceedings.

(2) The tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified, the claim or response of that party or, as the case may be, the part of it to which the deposit order relates shall be struck out. Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 19.

(5) If the tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 73 (tribunal's consideration as to whether to make a costs or preparation time order), unless the contrary is shown; and

(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.

PART 7

RULES COMMON TO ALL KINDS OF HEARING

General conduct of hearings

35.—(1) In accordance with rule 4 (general power to regulate procedure) and the overriding objective, a tribunal shall conduct each hearing in the manner it considers fair. The following rules do not restrict that general power.

(2) The tribunal—

(a) is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts; and

(b) may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence.

Written representations

36. The tribunal shall consider written representations from a party, including a party who does not propose to attend the hearing. Any such representations must be—

(a) presented not less than 7 days before the hearing; and

(b) at the same time, delivered to the other parties in accordance with rule 89.

Witnesses

37.—(1) Where a witness (who may be a party) is called to give oral evidence, any witness statement of that person ordered by the tribunal shall stand as that witness's evidence in chief unless the tribunal orders otherwise.

(2) Witnesses shall be required to give their oral evidence on oath or affirmation.

(3) If it considers it in the interests of justice to do so, the tribunal may exclude from the hearing any person who is to appear as a witness in the proceedings until such time as that person gives evidence.

Inspection of witness statements

38. Subject to rules 44 (privacy and restrictions on disclosure) and 91 and 92 (national security), any witness statement which stands as evidence in chief shall be available for inspection during the course of the hearing by members of the public attending the hearing unless the tribunal decides that all or any part of the statement is not to be admitted as evidence, in which case the statement or that part shall not be available for inspection.

Timetabling

39. A tribunal may impose limits on the time that a party may take in presenting evidence, questioning witnesses or making submissions, and may prevent the party from proceeding beyond any time so allotted.

Electronic communication

40. A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the tribunal hears and see any witness as seen by the tribunal.

Non-attendance

41. If a party fails to attend or to be represented at the hearing, the tribunal may dismiss the claim, proceed with the hearing in the absence of that party or adjourn the hearing to a later date. Before doing so, it shall consider any information which is available to it about the reasons for the party's absence.

Conversion from preliminary hearing to final hearing and vice versa

42. A tribunal conducting a preliminary hearing may order that it be treated as a final hearing, or vice versa, if the tribunal is properly constituted for the purpose and if it is satisfied that neither party shall be materially prejudiced by the change.

Majority decisions

43. Where a tribunal is composed of three persons, any decision may be made by a majority; but where it is composed of two persons, the employment judge has a second or casting vote.

Privacy and restrictions on disclosure

44.—(1) A tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings. Such an order may be made in any of the following circumstances—

(a) where the tribunal considers it necessary in the interests of justice;

(b) in order to protect the Convention rights of any person;

(c) for the purpose of hearing evidence from any person ("P") which in the opinion of the tribunal is likely to consist of information which, if disclosed—

(i) would contravene a prohibition imposed by or by virtue of any statutory provision;

(ii) would breach a confidence by virtue of which P has obtained the information;

(iii) 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, cause substantial injury to any undertaking of P's or in which P works;

(d) in relation to proceedings before the Fair Employment Tribunal, where the tribunal considers that—

(i) the disclosure of any evidence given would be against the interests of national security, public safety or public order;

(ii) the disclosure of evidence given by any person ("P") would create a substantial risk that P or another individual would be subject to physical attack or sectarian harassment.

(2) In considering whether to make an order under this rule, the tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(3) Such orders may include—

(a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;

(b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the register or otherwise forming part of the public record;

(c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;

(d) a restricted reporting order within the terms of Article 13 or 14 of the Industrial Tribunals Order;

(e) an order prohibiting the disclosure of specified information in accordance with Article 84(6) of the Fair Employment and Treatment Order.

(4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.

(5) Where an order is made under paragraph (3)(d)—

(a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person's identification;

(b) it shall specify the duration of the order;

(c) the tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the tribunal with any list of the proceedings taking place before the tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and

(d) the tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.

(6) "Convention rights" has the meaning given to it in section 1 of the Human Rights Act 1998(**a**).

PART 8

WITHDRAWAL OF A CLAIM

End of claim

45. Where a claimant informs the tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.

Dismissal following withdrawal

46. Where a claim, or part of it, has been withdrawn under rule 45, the tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless—

(a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the tribunal is satisfied that there would be legitimate reason for doing so; or

(b) the tribunal believes that to issue such a judgment would not be in the interests of justice.

(**a**) 1998 c. 42.

PART 9

PRELIMINARY HEARINGS

Scope of preliminary hearings

47.—(1) A preliminary hearing is a hearing at which the tribunal, notwithstanding any steps taken under rule 24, may do one or more of the following—

(a) conduct a preliminary consideration of the claim with the parties and make a case management order (including an order relating to the conduct of the final hearing);

(b) determine any preliminary issue;

(c) consider whether a claim or response, or any part, should be struck out under rule 32;

(d) make a deposit order under rule 34;

(e) explore alternative means of resolving the issues in dispute, including the use of conciliation.

(2) There may be more than one preliminary hearing in any case.

(3) "Preliminary issue" means, as regards any complaint, any substantive issue which may determine liability (for example, an issue as to jurisdiction or as to whether an employee was dismissed).

Fixing of preliminary hearings

48.—(1) A preliminary hearing may be directed by the tribunal on its own initiative following early case management under rule 24, at any time thereafter or as the result of an application by a party and the parties shall be given reasonable notice of the date of the hearing.

(2) Where the hearing involves any preliminary issues, that notice shall be given at least 14 days prior to the hearing unless the parties agree to shorter notice and shall specify the preliminary issues that are to be, or may be, decided at the hearing.

Constitution of tribunal for preliminary hearings

49. Preliminary hearings shall be conducted by an employment judge alone unless—

(a) notice has been given under rule 48(2) that any preliminary issues are to be, or may be, decided at the hearing; and

(b) a party has requested in writing that the hearing be conducted by an employment judge acting with either one or two other members in accordance with regulation 10,

and in that case an employment judge shall decide whether it would be desirable for the hearing to proceed in accordance with the party's request.

When preliminary hearings shall be in public

50. Preliminary hearings shall be conducted in private, except that where the hearing involves a determination under rule 47(1)(b) (preliminary issues) or (c) (striking out), any part of the hearing relating to such a determination shall be in public, subject to rule 44 (privacy and restrictions on disclosure) and rules 91 and 92 (national security), and the tribunal may direct that the entirety of the hearing be in public.

PART 10

FINAL HEARING

Scope of final hearing

51.—(1) A final hearing is a hearing at which the tribunal determines the claim or such parts as remain outstanding following early case management under rule 24 or any preliminary hearing.

(2) There may be different final hearings for different issues (for example, liability, remedy or costs).

Notice of final hearing

52. The parties shall be given not less than 14 days' notice of the date of a final hearing.

Constitution of tribunal for final hearings

53.—(1) Subject to paragraph (2), final hearings shall be conducted by a tribunal comprising an employment judge and either one or two other members, in accordance with regulation 10.

(2) Paragraph (1) does not apply to final hearings in national security proceedings, which shall be conducted by an employment judge and two other members, in accordance with regulation 12.

When final hearing shall be in public

54. Any final hearing shall be in public, subject to rule 44 (privacy and restrictions on disclosure) and rules 91 and 92 (national security).

PART 11

JUDGMENTS, CASE MANAGEMENT ORDERS AND REASONS

Judgments and case management orders made without a hearing

55. Judgments and case management orders made without a hearing shall be communicated in writing to the parties, identifying the employment judge who has made the judgment or order.

Judgments and case management orders made at or following a hearing

56.—(1) Where there is a hearing the tribunal may announce a judgment or case management order in relation to any issue at the hearing or reserve it to be sent to the parties as soon as practicable in writing.

(2) If the judgment or order is announced at the hearing, it shall be provided to the parties (and, where the proceedings were referred to the tribunal by a court, to that court) as soon as practicable in writing.

(3) Each judgment or order provided in writing shall be signed by the employment judge unless rule 58 (absence of employment judge) applies.

Reasons

57.—(1) The tribunal shall give reasons—

(a) for any order (which includes a case management order) on its own initiative, if it considers it appropriate to do so, or if requested by any party;

(b) for any judgment (including any judgment on an application for reconsideration or for orders for costs, preparation time or wasted costs).

(2) If a judgment or order for which reasons are given under paragraph (1)(a) is announced at a hearing, the reasons may be given orally at the hearing or reserved to be sent to the parties as soon as practicable in writing.

(3) Reasons given in writing may be included in the relevant judgment or order but if they are provided separately they shall be signed by the employment judge.

(4) Reasons given orally need only be provided in writing if requested by any party—

(a) at the hearing; or

(b) within 14 days of the date on which judgment or order was sent.

(5) If no request under paragraph (4) is received, the tribunal shall provide written reasons only if requested to do so by a court.

(6) The reasons given for any judgment or order shall be proportionate to the significance of the issue.

(7) The reasons given for a judgment shall—

(a) identify the issues which the tribunal has determined;

(b) state the findings of fact made in relation to those issues;

(c) concisely identify the relevant law;

(d) state how that law has been applied to those findings in order to decide the issues; and

(e) where the judgment includes a financial award identify, by means of a table or otherwise, how the amount to be paid has been calculated.

Absence of employment judge

58. If it is impossible or not practicable for a judgment, case management order or reasons to be signed by the employment judge as a result of death, incapacity or absence, that document shall be signed by the other member or members of the tribunal (if any) or by the President or the Vice-President (in the case of an employment judge sitting alone).

Consent orders and judgments

59. If the parties agree in writing or orally at a hearing upon the terms of any order or judgment a tribunal may, if it thinks fit, make such order or judgment, in which case it shall be identified as having been made by consent.

When a judgment or order takes effect

60. A judgment or order takes effect from the day when it is given or made, or on such later date as specified by the tribunal.

Entry of judgments and reasons in the register

61. Subject to rule 44 (privacy and restrictions on disclosure) and rules 91 and 92 (national security), a copy shall be entered in the register of any judgment and of any written reasons for a judgment.

Copies of judgment for referring court

62. Where the proceedings were referred to the tribunal by a court a copy of any judgment and of any written reasons shall be provided to that court.

Correction of clerical mistakes and accidental slips

63.—(1) An employment judge may at any time require corrections to be made to any clerical mistake or other accidental slip or omission in any order, judgment or other document produced by a tribunal.

(2) If such a correction is made, any published version of the document shall also be corrected.

(3) If any document is corrected under this rule, a copy of the corrected version, signed by the employment judge, shall be sent to all the parties.

PART 12

RECONSIDERATION OF JUDGMENTS

Reconsideration of judgment

64. A tribunal may, either on its own initiative or on the application of a party, reconsider any judgment ("the original decision") where it is necessary in the interests of justice to do so.

Reconsideration on tribunal's own initiative

65. Where the tribunal proposes to reconsider the original decision on its own initiative—

(a) it shall inform the parties of the reasons why the decision is being reconsidered; and

(b) the original decision shall be reconsidered in accordance with rule 67(2) (as if an application had been made and not refused).

Application for reconsideration

66. Except where it is made at a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties)—

(a) within 14 days of the date on which the original decision was sent to the parties; or

(b) within 14 days of the date that the written reasons were sent (if later),

and shall set out why reconsideration of the original decision is necessary in the interests of justice.

Consideration of the application

67.—(1) An employment judge shall consider any application made under rule 66. If the employment judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the parties shall be informed of the refusal.

(2) If the application is not refused, a notice shall be sent to the parties—

(a) setting a time limit for any response to the application by the other parties;

(b) seeking the views of the parties on whether the application can be determined without a hearing; and

(c) where the employment judge considers it appropriate, setting out the employment judge's provisional views on the application.

Reconsideration of the original decision

68.—(1) If the application has not been refused under rule 67(1), the original decision shall be reconsidered at a hearing unless the employment judge considers, having regard to any response to the notice under rule 67(2), that a hearing is not necessary in the interests of justice.

(2) If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

Unavailability of employment judge or tribunal

69.—(1) Where practicable—

(a) the consideration under rule 67 shall be by the employment judge who made the original decision or, as the case may be, chaired the tribunal which made it; and

(b) any reconsideration under rule 68 shall be made by the employment judge or, as the case may be, the tribunal which made the original decision.

(2) Where it is not practicable to proceed under paragraph (1), the President or the Vice-President shall appoint another employment judge to deal with the application or, in the case of a decision of a tribunal, shall either direct that the reconsideration be by such members of the original tribunal as remain available or reconstitute the tribunal in whole or in part.

Outcome of reconsideration

70. Following reconsideration under rule 68, the original decision may be confirmed, varied or revoked. If it is revoked it may be taken again.

PART 13

COSTS, PREPARATION TIME AND WASTED COSTS ORDERS

Definitions

71.—(1) "Costs" means fees, charges, disbursements or expenses (other than expenses that witnesses incur for the purpose of, or in connection with, attendance at a tribunal hearing) incurred by or on behalf of a party ("the receiving party").

(2) "Legally represented" means having the assistance of a person (including where that person is the receiving party's employee) who—

(a) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland;

(b) has a right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales, or all proceedings in county courts or magistrates' courts; or

(c) is an advocate or solicitor in Scotland.

(3) "Preparation time" means time spent by a party ("the receiving party") (including by any employees or advisers) in working on the case, except for time spent at any final hearing.

(4) "Represented by a lay representative" means having the assistance of a person who does not satisfy any of the criteria in paragraph (2) and who charges for representation in the proceedings.

Costs orders and preparation time orders

72.—(1) A costs order is an order that a party ("the paying party") make a payment to the receiving party in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative.

(2) A preparation time order is an order that a party ("the paying party") make a payment to the receiving party in respect of the receiving party's preparation time while not legally represented or while not represented by a lay representative.

(3) A costs order and a preparation time order may not both be made in favour of the same party in the same proceedings. A tribunal may, if it wishes, decide in the course of the proceedings that

a party is entitled to one order or the other but defer until a later stage in the proceedings deciding which kind of order to make.

When a costs order or a preparation time order may or shall be made

73.—(1) A tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) all or part of any claim or response had no reasonable prospect of success.

(2) A tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

(3) A tribunal may make such an order against a respondent who has not had a response accepted in the proceedings in relation to the conduct of any part which the respondent has taken in the proceedings.

(4) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the tribunal shall order the respondent to pay the costs incurred as a result of the postponement or adjournment if—

(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 the 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.

Procedure

74. A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the tribunal may order) in response to the application.

The amount of a costs order

75.—(1) A costs order may—

(a) order the paying party to pay the receiving party a specified amount, not exceeding £10,000, in respect of the costs of the receiving party;

(b) 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 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; or

(c) if the paying party and the receiving party agree as to the amount payable, be made in that amount.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative shall be no higher than the rate under rule 76(2).

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

The amount of a preparation time order

76.—(1) The tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of—

(a) information provided by the receiving party on time spent falling within rule 72(2); and

(b) the tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.

(2) The hourly rate is £39 and increases on 6 April each year by £1.

(3) The amount of a preparation time order shall be the product of the number of hours assessed under paragraph (1) and the rate under paragraph (2).

When a wasted costs order may be made

77.—(1) A tribunal may make a wasted costs order against a representative in favour of any party ("the receiving party") where that party has incurred costs ("wasted costs")—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the tribunal considers it unreasonable to expect the receiving party to pay.

(2) "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 the proceedings.

(3) A wasted costs order—

(a) may be made in favour of a party whether or not that party is legally represented;

(b) may be made in favour of a representative's own client;

(c) may not be made against a representative where that representative is representing a party in his or her capacity as an employee of that party.

Effect of a wasted costs order

78. A wasted costs order may—

(a) order the representative to pay the whole or part of any wasted costs of the receiving party;

(b) disallow any wasted costs that, but for the order, would be payable to the representative;

(c) order that the representative repay to its client any costs which have already been paid;

and the amount to be paid, disallowed or repaid must in each case be specified in the order.

Procedure for making a wasted costs order

79.—(1) A wasted costs order may be made by the tribunal on its own initiative or on the application of any party.

(2) A party may apply for a wasted costs order at any stage up to 28 days after the date on which the judgment finally determining the proceedings as against that party was sent to the parties.

(3) No such order shall be made unless the representative has had a reasonable opportunity to make representations (in writing or at a hearing, as the tribunal may order) in response to the application or proposal.

(4) The Secretary shall inform the representative's client in writing of any proceedings under this rule and of any order made against the representative.

Allowances

80. Where the tribunal makes a costs, preparation time, or wasted costs order, it may also make an order that the paying party (or, where a wasted costs order is made, the representative) pay to the Department, in whole or in part, any allowances (other than allowances paid to members of the tribunal) paid by the Department under Article 7(2) or (3) of the Industrial Tribunals Order or Article 83 of the Fair Employment and Treatment Order to any person for the purposes of, or in connection with, that person's attendance at the tribunal.

Ability to pay

81. In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

PART 14

DELIVERY OF DOCUMENTS

Delivery to the tribunal

82.—(1) Documents may be delivered to the tribunal—

(a) by post;

(b) by direct delivery to the tribunal office (including delivery by a courier or messenger service); or

(c) by electronic communication.

(2) The tribunal may from time to time notify the parties of any change of address, or that a particular form of communication should or should not be used, and any documents shall be delivered in accordance with that notification.

Delivery to parties

83.—(1) Documents may be delivered to a party (whether by the tribunal or by another party)—

(a) by post;

(b) by direct delivery to that party's address (including delivery by a courier or messenger service);

(c) by electronic communication; or

(d) by being handed personally—

(i) to that party, if an individual and if no representative has been named in the claim form or response;

(ii) to any individual representative named in the claim form or response; or

(iii) on the occasion of a hearing, to any person identified by the party as representing that party at that hearing.

(2) For the purposes of sub-paragraphs (a) to (c) of paragraph (1), the document shall be delivered to the address given in the claim form or response (which shall be the address of the party's representative, if one is named) or to a different address as notified in writing by the party in question.

(3) If a party has given both a postal address and one or more electronic addresses, any of them may be used unless the party has indicated in writing that a particular address should or should not be used.

Delivery to non-parties

84. Subject to the special cases referred to in rule 85, documents shall be sent to non-parties—

(a) at any address for service which they may have notified;

(b) where no address has been notified—

(i) at any known address or place of business in the United Kingdom;

(ii) if the party is a corporate body, at its registered or principal office in the United Kingdom;

(c) in any case, if permitted by the President or the Vice-President, at an address outside the United Kingdom.

Special cases

85. Addresses for serving the Department, the Advocate General for Northern Ireland, the Attorney General for Northern Ireland, the First Minister, the deputy First Minister, the Commission, and any other body or person the President considers appropriate, shall be issued by practice direction.

Substituted service

86. Where no address for service in accordance with the above rules is known or it appears that service at any such address is unlikely to come to the attention of the addressee, the President or the Vice-President may order that there shall be substituted service in such manner as appears appropriate.

Date of delivery

87. Subject to rule 88, a document delivered in accordance with rule 82 or 83 shall be taken to have been received by the addressee—

(a) if sent by post, on the day on which it would be delivered in the ordinary course of post;

(b) if sent by means of electronic communication, on the day of transmission;

(c) if delivered directly or personally, on the day of delivery.

Situations in which a document may be treated as delivered

88.—(1) A tribunal may treat any document as delivered to a person, notwithstanding any non-compliance with rules 83 to 85, if satisfied that the document in question, or its substance, has in fact come to the attention of that person.

(2) Without prejudice to the generality of paragraph (1), a tribunal may treat a document as delivered to a person, unless the contrary is proved, if the document was delivered by post or by direct or personal delivery to that person at their last known address, even if that document has been returned as undelivered.

Correspondence with the tribunal: copying to other parties

89. Where a party sends a communication to the tribunal (except an application for an order requiring a person to attend a hearing under rule 27(1)(a)(iii)) that party shall send a copy to all other parties and state that it has done so (by use of "cc" or otherwise) including the date and means of delivery. The tribunal may order a departure from this rule where it considers it in the interests of justice to do so.

PART 15

MISCELLANEOUS

Conciliation: recovery of sums payable under compromises

90.—(1) A party may apply for a declaration under Article 21A(4) of the Industrial Tribunals Order or Article 88A(4) of the Fair Employment and Treatment Order that a sum payable under the terms of a compromise is not recoverable under the general law of contract.

(2) The application, which must be made within 14 days of the date of issue of the certificate stating that a compromise has been reached, shall be considered by an employment judge.

National security proceedings: industrial tribunals

91.—(1) Where in relation to particular Crown employment proceedings before an industrial tribunal the Secretary of State considers that it would be expedient in the interests of national security, the Secretary of State may direct a tribunal to—

(a) conduct all or part of the proceedings in private;

(b) exclude a person from all or part of the proceedings;

(c) take steps to conceal the identity of a witness in the proceedings.

(2) Where an industrial tribunal considers it expedient in the interests of national security, it may order—

(a) in relation to particular proceedings (including Crown employment proceedings), anything which can be required to be done under paragraph (1);

(b) a person not to disclose any document (or the contents of any document), where provided for the purposes of the proceedings, to any other person (save for any specified person),

and any order so made shall be kept under review by the tribunal.

(3) Where the tribunal considers that it may be necessary to make an order under paragraph (2) in relation to particular proceedings (including Crown employment proceedings), the tribunal may consider any material provided by a party (or where the Secretary of State is not a party, by the Secretary of State) without providing that material to any other person. Such material shall be used by the tribunal solely for the purposes of deciding whether to make that order (unless that material is subsequently used as evidence in the proceedings by a party).

(4) Where the Secretary of State considers that it would be appropriate for the tribunal to make an order under paragraph (2), the Secretary of State may make an application for such an order.

(5) Where the Secretary of State has made an application under paragraph (4), the tribunal may order—

(a) in relation to the part of the proceedings preceding the outcome of the application, anything which can be required to be done under paragraph (1);

(b) a person not to disclose any document (or the contents of any document) to any other person (save for any specified person), where provided for the purposes of the proceedings preceding the outcome of the application.

(6) Where the Secretary of State has made an application under paragraph (4) for an order to exclude any person from all or part of the proceedings, the Secretary shall not send a copy of the response to that person, pending the decision on the application.

(7) If before the expiry of the time limit in rule 15(1)(b) the Secretary of State makes a direction under paragraph (1) or makes an application under paragraph (4), the Secretary of State may apply for an extension of that time limit.

(8) A direction under paragraph (1) or an application under paragraph (4) may be made irrespective of whether the Secretary of State is a party.

(9) Where having considered making an order under paragraph (2) the tribunal decides not to do so, rule 6 of Schedule 2 shall apply to the reasons given by the tribunal under rule 57 for that decision, save that the reasons shall not be entered on the register.

(10) The tribunal must ensure that in exercising its functions, information is not disclosed contrary to the interests of national security.

National security proceedings: Fair Employment Tribunal

92. Where the Fair Employment Tribunal considers it expedient in the interests of national security, it may order in relation to particular proceedings (including Crown employment proceedings) that all or part of the proceedings be conducted in private and any order so made shall be kept under review by the tribunal.

PART 16

OTHER PROCEEDINGS

Interim relief proceedings

93. When a tribunal hears an application for interim relief under Article 163 of the Employment Rights Order or for its variation or revocation under Article 166 of that Order, rules 47 to 50 (preliminary hearings) apply and the tribunal shall not hear oral evidence unless it directs otherwise.

Proceedings involving the Northern Ireland National Insurance Fund

94. The Department shall be entitled to appear and be heard at any hearing in relation to proceedings which may involve a payment out of the Northern Ireland National Insurance Fund and shall be treated as a party for the purposes of these Rules.

Collective agreements

95.—(1) Where a claim includes a complaint under any of the statutory provisions listed in paragraph (2) 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—

(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 an employment judge, to negotiate the variation.

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

(2) The statutory provisions are—

(a) Article 77A(4A) of the Sex Discrimination (Northern Ireland) Order 1976(**a**);

(b) paragraph 5 of Schedule 3A to the Disability Discrimination Act 1995(**b**);

(c) Article 68B(1) of the Race Relations (Northern Ireland) Order 1997(**c**);

(**a**) S.I. 1976/1042 (N.I. 15); Article 77A was inserted by S.I. 1988/1303 (N.I. 13), Article 11 and paragraph (4A) by S.I. 1993/2668 (N.I. 11), Article 11.
(**b**) 1995 c. 50; Schedule 3A was inserted by S.R. 2004 No. 55, regulation 16(2).
(**c**) S.I. 1997/869 (N.I. 6); Article 68B was inserted by regulation 53 of S.R. 2003 No. 341, regulation 53.

(d) Article 100B(1) of the Fair Employment and Treatment Order;

(e) paragraph 5 of Schedule 4 to the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003(**a**);

(f) paragraph 5 of Schedule 4 to the Employment Equality (Age) Regulations (Northern Ireland) 2006(**b**).

Devolution issues

96.—(1) In any proceedings involving a devolution issue as defined in paragraph 1 of Schedule 10 to the Northern Ireland Act 1998(**c**), the Secretary shall as soon as practicable give notice of that fact and a copy of the claim form and response to each of the persons mentioned in paragraph 5 of that Schedule, unless they are a party to the proceedings.

(2) A person to whom notice is sent may be treated as a party to the proceedings, so far as the proceedings relate to the devolution issue, if that person sends notice to the tribunal within 14 days of receiving a notice under paragraph (1).

(3) Any notices sent under paragraph (1) or (2) must at the same time be sent to the parties.

References to the Court of Justice of the European Union

97. Where a tribunal decides to refer a question to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union(**d**), a copy of that decision shall be sent to the registrar of that court.

Transfer of proceedings from a court

98. Where proceedings are referred to a tribunal by a court, these Rules apply as if the proceedings had been presented by the claimant.

Vexatious litigants

99. The tribunal may on its own initiative or on application make a request that the Attorney General for Northern Ireland review documents or information for the purpose of determining whether it is appropriate to prepare an application under section 32 of the Judicature (Northern Ireland) Act 1978(**e**) (restriction on institution of vexatious actions) and the tribunal shall provide any documents or information requested by the Attorney General for Northern Ireland for that purpose.

Provision of information to the Commission

100.—(1) The Secretary shall send to the Commission copies of all judgments, including any written reasons for such judgments, relating to proceedings under—

(a) the Equal Pay Act (Northern Ireland) 1970(**f**)

(b) the Sex Discrimination (Northern Ireland) Order 1976;

(c) the Sex Discrimination (Northern Ireland) Order 1988(**g**)

(d) the Disability Discrimination Act 1995;

(e) the Race Relations (Northern Ireland) Order 1997;

(f) the Fair Employment and Treatment Order;

(**a**) S.R. 2003 No. 497.
(**b**) S.R. 2006 No. 261.
(**c**) 1998 c. 47.
(**d**) O.J. No. C83, 30.03.10, p. 47.
(**e**) 1978 c. 23.
(**f**) 1970 c. 32 (N.I.).
(**g**) S.I. 1988/1303 (N.I. 13).

(g) the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003; or

(h) the Employment Equality (Age) Regulations (Northern Ireland) 2006.

(2) Paragraph (1) shall not apply in any proceedings where the Secretary of State has given a direction, or a tribunal has made an order, under rule 91 or 92 (national security); and either the Security Service, the Secret Intelligence Service or the Government Communications Headquarters is a party to the proceedings.

Application of this Schedule to levy appeals

101. For the purposes of an appeal against an assessment to a levy imposed under Article 23 of the Industrial Training (Northern Ireland) Order 1984(**a**) ("a levy appeal"), references in this Schedule to a claim or claimant shall be read as references to a levy appeal or to an appellant in a levy appeal respectively.

Application of this Schedule to appeals against improvement and prohibition notices

102.—(1) A person ("the appellant") may appeal an improvement notice under Article 23 of the Health and Safety Order or a prohibition notice under Article 24 of that Order by presenting a claim to the tribunal office before the end of the period of 21 days beginning with the date of the service on the appellant of the notice which is the subject of the appeal.

(2) For the purposes of such an appeal, this Schedule shall be treated as modified in the following way—

(a) references to a claim or claimant shall be read as references to an appeal or to an appellant in an appeal respectively;

(b) references to a respondent shall be read as references to the inspector appointed under Article 21(1) of the Health and Safety Order who issued the notice which is the subject of the appeal.

(3) For the purposes of this rule and its application to this Schedule, "Health and Safety Order" means the Health and Safety at Work (Northern Ireland) Order 1978(**b**).

Application of this Schedule to appeals against directions, non-discrimination notices and notices of refusal

103.—(1) For the purposes of an appeal against directions, a non-discrimination notice or a notice of refusal, this Schedule shall be treated as modified in the following ways—

(a) references to a claim or claimant shall be read as references to a notice of appeal or to an appellant in an appeal against directions, a non-discrimination notice or a notice of refusal respectively (as the case may require);

(b) references to a respondent shall be read as references to the Commission.

(2) For the purposes of this rule and its application to this Schedule—

"directions" means directions given by the Commission under Article 12, 13, 14(4) or 57 of the Fair Employment and Treatment Order or substituted by the tribunal under Article 15 of that Order;

"non-discrimination notice" means a notice under Article 67 of the Sex Discrimination (Northern Ireland) Order 1976, Article 55 of the Race Relations (Northern Ireland) Order 1997, Article 6 of the Equality (Disability, etc.) (Northern Ireland) Order 2000(**c**) or regulation 37 of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006(**d**);

(**a**) S.I. 1984/1159 (N.I. 9).
(**b**) S.I. 1978/1039 (N.I. 9).
(**c**) S.I. 2000/1110 (N.I. 2).
(**d**) S.R. 2006 No. 439.

"notice of refusal" means a notice served by the Commission under Article 62(7) or 63(5) of the Fair Employment and Treatment Order.

Application of this Schedule to applications for enforcement of an undertaking or directions

104.—(1) For the purposes of an application under Article 16(1) (enforcement of an undertaking or directions) or 16(7)(b) (enforcement of an order under Article 16(3)(a)) of the Fair Employment and Treatment Order—

(a) any reference to a claim shall be read as a reference to an application;

(b) any reference to a claimant shall be read as a reference to the Commission;

(c) any reference to a respondent shall be read as a reference to the person who gave the undertaking, was given the directions or against whom an order was made (as the case may require).

(2) For the purposes of an application under Article 16(8)(a) (to revoke or vary the terms of an order under Article 16(3)) of the Fair Employment and Treatment Order—

(a) any reference to a claim shall be read as a reference to an application;

(b) any reference to a claimant shall be read as a reference to the applicant;

(c) any reference to a respondent shall be read—

(i) if the applicant is the Commission, as a reference to the person against whom the order was made; and

(ii) if the applicant is the person against whom the order was made, as a reference to the Commission.

(3) For the purposes of this rule and its application to this Schedule—

"directions" means directions given by the Commission under Articles 12, 13, 14 or 57 of the Fair Employment and Treatment Order or substituted by the Fair Employment Tribunal under Article 15 of that Order;

"undertaking", except for the purposes of rule 44(1)(c)(iii), means an undertaking given to the Commission under Article 12, 13 or 57 of the Fair Employment and Treatment Order,

and any reference to Article 15 or 16 of the Fair Employment and Treatment Order (appeals and legal proceedings in relation to undertakings and directions) includes reference to those provisions as they are applied for the purposes of Articles 57 and 58 by Article 59 of that Order.

SCHEDULE 2

Regulation 17(2)(a)

THE INDUSTRIAL TRIBUNALS (NATIONAL SECURITY) RULES OF PROCEDURE 2020

Application of Schedule 2

1.—(1) Subject to paragraph (2) this Schedule applies to industrial tribunal proceedings in relation to which a direction is given, or order is made, under rule 91 (national security) and modifies the rules in Schedule 1 in relation to such proceedings.

(2) Rule 5 of this Schedule applies to both industrial tribunals and Fair Employment Tribunal proceedings.

(3) Except where otherwise provided, references in this Schedule to rule numbers are to those in Schedule 1.

(4) The definitions in rule 1 apply to terms in this Schedule and in this Schedule—

"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 direction under rule 91(1)(b) or an order under rule 91(2)(a) (read with rule 91(1)(b)).

Serving of documents

2. The Secretary shall not send a copy of the response to any excluded person.

Witness orders and disclosure of documents

3.—(1) Where a person or their representative has been excluded under rule 91 from all or part of the proceedings and a tribunal is considering whether to make an order under rule 27(1)(a) (documents and evidence), the Secretary of State (whether a party to the proceedings or otherwise) may make an application to the tribunal objecting to that order. 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 shall hear and determine the Secretary of State's application in private and the Secretary of State shall be entitled to address the tribunal.

Special advocate

4.—(1) The tribunal shall inform the Advocate General for Northern Ireland if a party becomes an excluded person.

(2) The Advocate General for Northern Ireland may appoint a special advocate to represent the interests of a person in respect of those parts of the proceedings from which—

(a) a person's representative is excluded;

(b) a person and their representative are excluded;

(c) a person is excluded and is unrepresented.

(3) A special advocate shall be—

(a) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland;

(b) a person who has a right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales or all proceedings in county courts or magistrates' courts, or

(c) an advocate or a solicitor admitted in Scotland.

(4) An excluded person (where that person is a party) may make a statement to the tribunal before the commencement of the proceedings or the relevant part of the proceedings.

(5) The special advocate may communicate, directly or indirectly, with an excluded person at any time before receiving material from the Secretary of State in relation to which the Secretary of State states an objection to disclosure to the excluded person ("closed material").

(6) After receiving closed material, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (7) or (9) or an order of the tribunal.

(7) The special advocate may communicate about the proceedings with—

(a) the tribunal;

(b) the Secretary of State, or a representative of the Secretary of State;

(c) the Advocate General for Northern Ireland, or a representative of the Advocate General for Northern Ireland;

(d) any other person, except for an excluded person or a representative of that person, with whom it is necessary for administrative purposes to communicate about matters not connected with the substance of the proceedings.

(8) The special advocate may apply for an order from the tribunal to authorise communication with an excluded person or with any other person and if such an application is made—

(a) the Secretary must notify the Secretary of State of the request; and

(b) the Secretary of State may, within a period specified by the tribunal present to the tribunal and serve on the special advocate notice of any objection to the proposed communication.

(9) After the special advocate has received closed material, an excluded person may only communicate with the special advocate in writing and the special advocate must not reply to the communication, except that the special advocate may send a written acknowledgment of receipt.

(10) References in these Regulations and Schedules 1 and 2 to a party shall include any special advocate appointed in particular proceedings, save that the references to "party" or "parties" in rules 3, 7(c), 20, 28, 30(2) and (3), the first reference in rule 32, 33 to 35, 41, 59, 71 to 81, 83, 94 and 96(3) shall not include the special advocate.

Hearings

5. Subject to any order under rule 44 (privacy and restrictions on disclosure) or any direction or order under rules 91 and 92 (national security), any hearing shall take place in public, and any party may attend and participate in the hearing.

Reasons in national security proceedings

6.—(1) The Secretary shall send a copy of the written reasons given under rule 57 to the Secretary of State and allow 42 days for the Secretary of State to make a direction under paragraph (3) before sending them to any party or entering them onto the register.

(2) If the tribunal considers it expedient in the interests of national security, it may by order take steps to keep secret all or part of the written reasons.

(3) If the Secretary of State considers it expedient in the interests of national security, the Secretary of State may direct that the written reasons—

(a) shall not be disclosed to specified persons and require the tribunal to prepare a further document which sets out the reasons for the decision, but omits specified information ("the edited reasons");

(b) shall not be disclosed to specified persons and that no further document setting out the reasons for the decision should be prepared.

(4) Where the Secretary of State has directed the tribunal to prepare edited reasons, the employment judge shall initial each omission.

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

(a) send the edited reasons to the specified persons;

(b) send the edited reasons and the written reasons to the relevant persons listed in paragraph (7) ; and

(c) where the written reasons relate to a judgment, enter the edited reasons on the register but not enter the written reasons on the register.

(6) Where a direction has been made under paragraph (3)(b), the Secretary shall send the written reasons to the relevant persons listed in paragraph (7), but not enter the written reasons on the register.

(7) The relevant persons are—

(a) the respondent or the respondent's representative, provided that they were not specified in the direction made under paragraph (3);

(b) the claimant or the claimant's representative, provided that they were not specified in the direction made under paragraph (3);

(c) any special advocate appointed in the proceedings; and

(d) where the proceedings were referred to the tribunal by a court, to that court.

(8) Where written reasons or edited reasons are corrected under rule 63, the Secretary shall send a copy of the corrected reasons to the same persons who had been sent the reasons.

SCHEDULE 3

Regulation 17(2)(b)

THE INDUSTRIAL TRIBUNALS (EQUAL VALUE) RULES OF PROCEDURE 2020

Application of Schedule 3

1.—(1) This Schedule applies to proceedings involving an equal value claim and modifies the rules in Schedule 1 in relation to such proceedings.

(2) The definitions in rule 1 of Schedule 1 apply to terms in this Schedule and in this Schedule—

"comparator" means the person of the opposite sex to the claimant in relation to whom the claimant alleges that his or her work is of equal value;

"Equal Pay Act" means the Equal Pay Act (Northern Ireland) 1970(**a**);

"equal value claim" means a claim 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(**b**);

"the facts relating to the question" has the meaning in rule 6(1)(a);

"independent expert" means a member of the panel of independent experts mentioned in section 2A(4)(**c**) of the Equal Pay Act;

"the question" means whether the claimant's work is of equal value to that of the comparator; and

"report" means a report required by a tribunal to be prepared in accordance with section 2A(1)(b)(**d**) of the Equal Pay Act.

(3) A reference in this Schedule to a rule is a reference to a rule in this Schedule unless otherwise provided.

(4) A reference in this Schedule to "these rules" is a reference to the rules in Schedules 1 and 3 unless otherwise provided.

(5) Any reference in the Rules to a tribunal applies to a tribunal comprising—

(a) an employment judge acting alone;

(b) an employment judge acting with one or two other members.

General power to manage proceedings

2.—(1) The tribunal may, subject to rules 3(1) and 6(1), order—

(a) 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);

(b) the parties to send copies of documents or provide information to the independent expert;

(c) the respondent to grant the independent expert access to the respondent's premises during a period specified in the order to allow the independent expert to conduct interviews with persons identified as relevant by the independent expert;

(**a**) 1970 c.32.
(**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(1); and paragraph (4) was amended by S.R. 2005 No. 145, regulation 2(6).
(**d**) Sub-paragraph (b) was amended by S.R. 2005 No. 145, regulation 2(2)(a).

(d) 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 matters on which they disagree.

(2) In managing the proceedings, the tribunal shall have regard to the indicative timetable in the Annex to this Schedule.

Conduct of stage 1 equal value hearing

3.—(1) Where 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) the tribunal shall conduct a hearing, which shall be referred to as a "stage 1 equal value hearing", and at that hearing shall—

(a) strike out the claim (or the relevant part of it) if in accordance with section 2A(2A)(**a**) of the Equal Pay Act the tribunal must determine that the work of the claimant and the comparator are not of equal value;

(b) determine the question or require an independent expert to prepare a report on the question;

(c) if the tribunal has decided to require an independent expert to prepare a report on the question, fix a date for a further hearing, which shall be referred to as a "stage 2 equal value hearing"; and

(d) if the tribunal has not decided to require an independent expert to prepare a report on the question, fix a date for the final hearing.

(2) Before a claim or part is struck out under paragraph (1)(a), notice shall be sent to the claimant, who shall be allowed 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. Such notice need not be sent if the claimant has been given an opportunity to make such representations orally to the tribunal.

(3) The tribunal may, on the application of a party, hear evidence and submissions on the issue contained in section 1(3) 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 (1)(b).

(4) The parties shall be given reasonable notice of the date of the stage 1 equal value hearing. The notice shall specify the matters that are to be, or may be, considered at the hearing and refer to the standard orders in rule 4.

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, order that—

(a) before the end of the period of 14 days 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, disclose information which enables the respondent to identify the comparator; and

(ii) identify to the respondent in writing the period in relation to which the claimant 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—

(i) where the claimant has not disclosed the name of the comparator to the respondent under sub-paragraph (a) and the respondent has been provided with sufficient detail to be able to identify the comparator, the respondent 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;

(**a**) Paragraph (2A) was inserted by S.R. 2005 No. 145, regulation 2(5).

(iii) the parties shall identify to each other in writing the facts which they consider to be relevant to the question;

(c) the respondent shall grant access to the respondent's premises during a period specified in the order to allow the claimant and his or her representative to interview any comparator;

(d) the parties shall before the end of the period of 56 days present to the tribunal an agreed written statement specifying—

(i) job descriptions for the claimant and any comparator;

(ii) the facts which both parties consider are relevant to the question;

(iii) the 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 before the final hearing, 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 the final hearing; and

(f) the parties shall, at least 28 days before the final hearing, 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) The tribunal may add to, vary or omit any of the standard orders in paragraph (1).

Involvement of independent expert in fact finding

5. Where the tribunal has decided to require an independent expert to prepare a report on the question, it may at any stage of the proceedings, on its own initiative or on the application of a party, order the independent expert to assist the tribunal in establishing the facts on which the independent expert may rely in preparing the report.

Conduct of stage 2 equal value hearing

6.—(1) Any stage 2 equal value hearing shall be conducted by a tribunal and at the hearing the tribunal shall—

(a) make a determination of facts on which the parties cannot agree which relate to the question and shall require the independent expert to prepare the 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"); and

(b) fix a date for the final hearing.

(2) Subject to paragraph (3), the facts relating to the question shall, in relation to the question, be the only facts on which the tribunal shall rely at the final hearing.

(3) 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.

(4) The parties shall be given reasonable notice of the date of the stage 2 equal value hearing. The notice shall draw the attention of the parties to this rule and refer to the standard orders in rule 7.

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, order that—

(a) by a specified date the independent expert shall prepare a report on the question and shall (subject to rule 13) send copies of it to the parties and to the tribunal; and

(b) the independent expert shall prepare the report on the question on the basis only of the facts relating to the question.

(2) The tribunal may add to, vary or omit any of the standard orders in paragraph (1).

Final hearing

8.—(1) Where an independent expert has prepared a report, the tribunal shall admit the report in evidence unless it determines that the report is not based on the facts relating to the question. If the tribunal does not admit the report, it may determine the question itself or require another independent expert to prepare a report on the question.

(2) The tribunal may refuse to admit evidence of facts or hear submissions on issues which have not been disclosed to the other party as required by these rules or any order (unless it was not reasonably practicable for a party to have done so).

Duties and powers of the independent expert

9.—(1) When a tribunal makes an order requiring an independent expert to prepare a report under rule 3(1)(b) or to assist the tribunal in establishing the facts under rule 5, it shall inform that independent expert of the duties and powers under this rule.

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

(a) assist it in furthering the overriding objective set out in rule 2 of Schedule 1;

(b) comply with the requirements of these rules and any orders made by the tribunal;

(c) keep the tribunal informed of any delay in complying with any order (with the exception of minor or insignificant delays in compliance);

(d) comply with any timetable imposed by the tribunal in so far as this is reasonably practicable;

(e) when requested, inform the tribunal of progress in the preparation of the 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) attend hearings.

(3) The independent expert may make an application for any order or for a hearing to be held as if the independent expert 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 require a different independent expert 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 specified date. Such documentation and work in progress must be in a form which the tribunal is able to use and may be used in relation to those proceedings by the tribunal or by another independent expert.

Use of expert evidence

10.—(1) The tribunal shall restrict expert evidence to that which it considers is reasonably required to resolve the proceedings.

(2) An expert shall have a duty, overriding any obligation to the person instructing or paying the expert, to assist the tribunal on matters within the expert's expertise.

(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 before the final hearing.

(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, 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 and if the parties wishing to instruct the joint expert cannot agree an expert, the tribunal may select an expert.

Written questions to experts

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

(2) Unless the tribunal 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) An expert shall answer written questions within 28 days of receipt and the answers shall be treated as part of the expert's report.

(4) Where a party has put a written question to an expert instructed by another party and the expert does not answer that question within 28 days, the tribunal may order that the party instructing that expert may not rely on the evidence of that expert.

Procedural matters

12.—(1) Where an independent expert has been required to prepare a report, the Secretary shall send that expert notice of any hearing, application, order or judgment in the proceedings as if the independent expert were a party to those proceedings and when these rules or an order requires a party to provide information to another party, such information shall also be provided to the independent expert.

(2) There may be more than one stage 1 or stage 2 equal value hearing in any case.

(3) Subject to the provisions of this Schedule, any power conferred on an employment judge by Schedule 1 may be carried out in an equal value claim by a tribunal or an employment judge.

National security proceedings

13. Where in an equal value claim a direction is given, or order is made, under rule 91 of Schedule 1 (national security)—

(a) any independent expert appointed shall send a copy of any report and any responses to written questions to the tribunal only; and

(b) before the parties are sent a copy of a report or answers which have been received from an independent expert, the procedure set out in rule 6 of Schedule 2 shall be followed 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.

ANNEX

The indicative timetable

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

SCHEDULE 4

REVOCATION AND CONSEQUENTIAL AMENDMENTS

PART 1

Regulation 2(1)

Revocation

Regulations revoked	*Reference*
The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005	S.R. 2005 No. 150
The Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005	S.R. 2005 No. 151
The Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2005	S.R. 2005 No. 376
The Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) (No. 2) Regulations (Northern Ireland) 2005	S.R. 2005 No. 578
The Fair Employment Tribunal (Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2005	S.R. 2005 No. 579
The Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2011	S.R. 2011 No. 161
The Fair Employment Tribunal (Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2011	S.R. 2011 No. 162
Paragraphs 6 and 7 of Part 2 of the Schedule to the Employment Rights (Amendment) (Northern Ireland) (EU Exit) Regulations 2019	S.I. 2019/537

PART 2

Regulation 2(2)

Consequential amendments

1. In Article 2(1) of the Fair Employment Tribunal (Remedies) Order (Northern Ireland) 1995(**a**), for the definition of "an award under the Act", substitute—

> ""an award under the Act" means an order under Article 39(1)(b) of the Fair Employment and Treatment (Northern Ireland) Order 1998 for payment of compensation, but does not include an award in respect of costs, allowances or preparation time under Part 13 of Schedule 1 to the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020, even if that award is made in the same proceedings as such an order;".

2. In regulation 1(2) of the Industrial Tribunals (Interest on Awards in Sex and Disability Discrimination Cases) Regulations (Northern Ireland) 1996(**b**), in the definition of "an award under the relevant legislation"(**c**), from "but does not include" to the end, substitute "but does not include an award in respect of costs, allowances or preparation time under Part 13 of Schedule 1 to the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020, even if that award is made in the same proceedings as an award described in paragraph (a) or an order described in paragraph (b);".

(**a**) S.R. 1995 No. 240.
(**b**) S.R. 1996 No. 581.
(**c**) The definition was substituted by S.R. 2007 No. 102, regulation 2(1).

3. In Article 1(2) of the Race Relations (Interest on Awards) Order (Northern Ireland) 1997(**a**), for the definition of "an award under the Order", substitute—

> ""an award under the Order" means an order under Article 53(1)(b) of the Order for payment of compensation, but does not include an award in respect of costs, allowances or preparation time under Part 13 of Schedule 1 to the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020, even if that award is made in the same proceedings as such an order;".

4. In regulation 1(2) of the Industrial Tribunals (Interest on Awards in Sexual Orientation Discrimination Cases) Regulations (Northern Ireland) 2003(**b**), for the definition of "an award under the Regulations", substitute—

> ""an award under the Regulations" means an order under regulation 36(1)(b) of the Regulations for payment of compensation, but does not include an award in respect of costs, allowances or preparation time under Part 13 of Schedule 1 to the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020, even if that award is made in the same proceedings as such an order;".

5. In regulation 3(1) of the Gangmasters (Appeals) Regulations (Northern Ireland) 2006(**c**), for "the panel of chairmen appointed under the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005", substitute "the panel of employment judges appointed under the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020".

6. In regulation 1(2) of the Industrial Tribunals (Interest on Awards in Age Discrimination Cases) Regulations (Northern Ireland) 2006(**d**), for the definition of "an award under the Age Regulations", substitute—

> ""an award under the Age Regulations" means an order under regulation 43(1)(b) of the Age Regulations for payment of compensation, but does not include an award in respect of costs, allowances or preparation time under Part 13 of Schedule 1 to the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020, even if that award is made in the same proceedings as such an order;".

7. In Schedule 8 to the REACH Enforcement Regulations 2008(**e**)—

(a) in paragraph (4) for "Schedule 5 to the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005", substitute "Rule 102 of Schedule 1 to the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020";

(b) in paragraph (5) for "Schedule 5" substitute "Schedule 1".

8. In regulation 11(2)(b) of the Health and Safety (Fees) Regulations (Northern Ireland) 2012(**f**), for "regulation 12(1) and (3)(c) of, and Schedules 1 and 5 to, the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005", substitute "rule 102 of Schedule 1 to the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020".

9. In regulation 27(4) of the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013(**g**), for "Schedule 5 to the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005", substitute "Rule 102 of Schedule 1 to

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(**a**) S.R. 1997 No. 320.
(**b**) S.R. 2003 No. 498.
(**c**) S.R. 2006 No. 189.
(**d**) S.R. 2006 No. 262.
(**e**) S.I. 2008/2852.
(**f**) S.R. 2012 No. 255.
(**g**) S.I. 2013/1506.

the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020".

10. For sub-paragraph (ba)(**a**) of paragraph 2 of Schedule 5 to the Public Service Pensions Act (Northern Ireland) 2014(**b**), substitute—

> "(ba) a member of a panel of employment judges appointed in accordance with regulation 7(1)(a) of the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020;".

11. In the Schedule to the Public Service Pensions Act (Northern Ireland) 2014 (Judicial Offices) Order (Northern Ireland) 2015(**c**)—

(a) omit "Member of a panel of chairmen appointed under Article 82 of the Fair Employment and Treatment (Northern Ireland) Order 1998.";

(b) omit "Member of a panel of chairmen appointed under regulation 4(1)(a) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005";

(c) before "President or other member of the Lands Tribunal, where that office is held on a salaried basis", insert "Member of a panel of employment judges appointed in accordance with regulation 7(1)(a) of the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020.".

12. In the Control of Major Accident Hazards Regulations (Northern Ireland) 2015(**d**)—

(a) in regulation 23(6), for "regulation 12(3)(c) of, and Schedule 5 to, the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005", substitute "rule 102 of Schedule 1 to the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020";

(b) in regulation 28(9)(b), for "the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005", substitute "the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020".

13. In Part 2 of the Schedule to the Employment Rights (Amendment) (Northern Ireland) (EU Exit) Regulations 2019(**e**), after paragraph 10, insert—

> **"The Employment Rights (Amendment) (Northern Ireland) (EU Exit) Regulations 2019**
>
> **10A.** In Schedule 1 (Industrial Tribunals and Fair Employment Tribunal Rules of Procedure 2020) to the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 omit rule 97 (references to the Court of Justice of the European Union).".

14. In Article 6(5) of the Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2019(**f**), for "the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005", substitute "the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020".

(**a**) Sub-paragraph (ba) was inserted by S.R. 2015 No. 76, Schedule 3, Part 3, paragraph 12(2).
(**b**) 2014 c. 2 (N.I.).
(**c**) S.R. 2015 No. 161.
(**d**) S.R. 2015 No. 325.
(**e**) S.I. 2019/537.
(**f**) S.R. 2019 No. 155.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations and Rules of Procedure establish requirements in relation to proceedings before industrial tribunals (ITs) and the Fair Employment Tribunal (FET). They revoke and replace earlier regulations and rules which separately dealt with these tribunals.

Regulations 4 and 5 confirm the continuation of the two tribunals as separate institutions. Regulation 5 concerns the FET's jurisdiction. Regulation 7 deals with the appointment of tribunal panels. Regulations 8 to 12 deal with the constitution of the tribunals as institutions and of individual tribunal panels. Regulation 13 specifies how the tribunals' resources are to be used and how functions of the President may be delegated. Regulation 14 empowers the President to issue practice directions. Regulation 15 gives the Department for the Economy power to prescribe forms for making and responding to a claim. Regulation 16 requires certain information to be placed on a publicly accessible register. Regulation 18 provides transitional arrangements whereby for the first month after coming into operation a prospective claimant will not be required to engage in early conciliation before submitting a claim and such claim will not be rejected on the grounds of not having engaged in early conciliation. Regulation 18 also preserves the applicability of various provisions of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 and the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005 where a relevant event occurs prior to the coming into operation of these Regulations.

Schedule 1 contains the rules of procedure specifying how most cases will be conducted.

Part 1 is introductory and includes rule 2, which specifies the Rules' overriding objective, which is to ensure that the parties have an equal opportunity to present their case and that each case is dealt with proportionately, flexibly and without undue formality, delay or expense. Rule 3 requires the tribunal to encourage alternative dispute resolution where practicable and appropriate. Rule 4 specifies that a tribunal may regulate its own procedure. This Part also deals with the interpretation of terms (rule 1) and calculation of time periods (rule 5). Rule 6 allows the tribunal to adjust time limits. Rule 7 deals with the consequences of failing to comply with the rules or an order made by the tribunal. Rule 8 states that the President may issue guidance dealing with practice issues.

Part 2 deals with starting a claim. Rules 9 and 10 specify the form that a claim must take. Rule 11 sets out when a claim will be rejected; and rule 12 provides for a rejection to be reconsidered. Rule 13 deals with providing information to the relevant regulator where the claim involves a protected disclosure.

Part 3 specifies the tribunal's actions after receiving a claim. The Secretary must send a copy of an accepted claim to the respondent (rule 14).

Part 4 concerns the response to the claim. Rule 15 sets out what must be included on a response form, which (subject to Rule 18) must be presented within 28 days, and rule 16 allows for the rejection of a response. Per rule 17, a respondent can apply for a rejection to be reconsidered. Rule 18 deals with applications from the respondent to extend time allowed for the response. Rule 19 sets out what happens where a claim is not contested or no response is received on time. Per rule 20, an accepted response will be copied to the other parties.

Part 5 deals with employer's contract claims. Under rule 21, an employer alleging breach of contract must include relevant information in the response form. Rule 22 requires the tribunal to advise the claimant of such a claim, and the claimant (rule 23) must respond within 28 days.

Part 6 concerns case management and other powers of the tribunal. Rule 24, which specifies the procedure for early case management. Having reviewed documents relevant to the claim, an employment judge may give the parties an assessment of the issues that the tribunal will determine, the arguments and evidence that the parties propose to use, and any opportunities that may exist to resolve the dispute. The employment judge may issue case management orders and

can use any means of communication to engage the parties. In accordance with rule 25, the tribunal can issue a case management order at any stage and makes clear that that the powers listed in the rules are not exhaustive. Rule 26 specifies how to apply for a case management order. Rule 27 deals with powers in relation to the production of evidence. Rule 28 makes clear that the tribunal can add, replace or remove a party from proceedings and rule 29 allows for the involvement of anyone who has a legitimate interest. Rule 30 sets out the approach to multiple claims, where a 'lead' case may be identified. Rule 31 deals with the power to convene the FET to hear aspects of a case that would normally only be dealt with by an IT. Rule 32 enables the tribunal to strike out, at any stage, all or part of a claim or response where there has been unreasonable presentation of material or conduct, including non-compliance or failing to pursue the case. No strike out will occur unless a party has had a chance to address the issue. Rule 33 concerns 'unless orders' which are orders that, if there is non-compliance, will result in the dismissal of all or some of the claim or response. Rule 34 concerns deposits, which may be payable if the tribunal believes that a party, in continuing to pursue an issue, has little reasonable prospect of success.

Part 7 sets out rules common to all kinds of hearing. Rule 35 contains a general requirement to conduct hearings fairly. Under it, the tribunal may question parties or witnesses as appropriate to gather evidence and clarify issues. Rule 36 allows for consideration of written material submitted by a party who does not intend to be present at a hearing. Rule 37 deals with presenting evidence on oath or affirmation and provides that a written witness statement, ordinarily, will be considered as a party's main evidence. In the interests of justice, the tribunal has power to exclude a witness until it is time for that person to give evidence. Rule 38 specifies that relevant parts of such witness statements are open for inspection during the hearing. Rule 39 enables the tribunal to restrict the time available to a party for presenting evidence, asking questions of witnesses, or making submissions to the tribunal. Rule 40 allows the use of electronic communication. If a party neither attends a hearing nor sends a representative, rule 41 allows the tribunal to dismiss the claim or proceed without the party, providing that it has first sought to establish why the party is absent and has considered the information received. Per rule 42, a tribunal can convert a preliminary hearing to a final hearing and vice versa. A tribunal may make a majority decision in a case where it is composed of three members, as specified in rule 43. However, where there are only two members, the employment judge has a deciding vote. Rule 44 deals with privacy and the restriction of publicity in sensitive cases.

Part 8 specifies the process for withdrawing a claim. Rule 45 sets out when a claim is considered to be withdrawn. When withdrawn, the tribunal will issue a judgment dismissing the claim under rule 46.

Part 9 concerns preliminary hearings, which are described in rule 47. Rule 48 deals with the arrangements for such hearings which will be conducted by an employment judge alone (rule 49) and, with exceptions, in private (rule 50) unless otherwise agreed.

Part 10 deals with the final hearing (which determines the substantive issues). Parties must receive 14 days' notice of such a hearing (rule 52). Rule 53 specifies how the tribunal is to be comprised. Per rule 54, final hearings will usually be in public.

Part 11 contains rules dealing with judgments, case management orders and reasons. Judgments or case management orders made without a hearing will be signed and communicated to the parties in writing in accordance with rule 55. Where there is a hearing, rule 56 provides that the tribunal may either announce the judgment or order at the hearing or send it as soon as practicable to the parties in writing. Rule 57 sets out how reasons for judgments are to be communicated and what they must contain. Rule 58 provides for these documents to be signed where the employment judge is unable to do so. Rule 59 allows the tribunal to issue an order or judgment on the basis of consent. Rule 60 specifies the effective date of a judgment or order. Rule 61 provides that a copy of any judgment or order, and associated reasons, will be generally placed on the register. Rule 62 makes clear that a copy of any judgment and written reasons must be referred to a court where the initial referral of the proceedings came from there. Rule 63 allows for the correction of mistakes in any document produced by the tribunal.

Part 12 sets out the procedure for the reconsideration of judgments. Rule 64 provides the power for tribunals to reconsider any judgment in the interests of justice. If the tribunal itself is proposing the reconsideration, rule 65 provides that it must inform the parties as to why before proceeding. Reconsideration may also be prompted by a party's application (rule 66). Having considered such an application, the employment judge will consider whether to accept it (rule 67). If a matter is to be reconsidered, rule 68 generally requires this to be at a hearing. Work under rule 67 and 68 is to be carried out by the employment judge who made the original decision unless this is not practicable (rule 69). Rule 70 makes clear that reconsideration can lead to the original decision being confirmed, varied or revoked.

Part 13 deals with orders for costs and preparation time. Rule 71 provides definitions and rule 72 indicates that costs orders are associated with representation and preparation time orders with self representation. Rule 73 specifies circumstances when a costs or preparation time order may or must be made. An application for such an order, in accordance with rule 74, can be made within 28 days following the judgment. The amount of a costs order, explained in rule 75, is up to £10,000 unless the parties agree otherwise or it is determined in a county court. In calculating costs in respect of fees charged by a lay representative, an hourly rate is to be used, with this amount increasing by £1 each April. The same hourly rate applies in calculating the amount of a preparation time order under rule 76. Rule 77 states that a "wasted costs order" may be made where a party's representative's improper actions or omissions have resulted in costs unreasonably being incurred. A wasted costs order may require the representative to pay all or part of the wasted costs, disallow a payment otherwise due to be made to the representative, or order the representative to repay the client (rule 78). Rule 79 specifies how and when such an order is to be made. Rule 80 makes clear that where a costs, preparation time or wasted costs order is issued, it can include reimbursement for allowances paid by the Department in respect of the person's tribunal attendance. Rule 81 requires the tribunal to consider a party's or representative's ability to pay when assessing the amount of a costs, preparation time or wasted costs order.

Part 14 sets out rules concerning delivery of documents. Rule 82 deals with their delivery to the tribunal; rule 83 to parties; rule 84 to non-parties; and rule 85 with special cases. Rule 86 deals with situations where it appears that sending documents to a particular address is unlikely to bring them to the attention of the person intended to receive them. Rule 87 sets out when a document is taken as received and rule 88 allows the tribunal to treat a document as delivered if it is content that the intended recipient has become aware of it. Rule 89 generally requires communication to the tribunal to be copied to all the other parties.

Part 15 contains some miscellaneous provisions. Rule 90 sets out the procedure whereby a person required to pay a sum under a conciliated settlement may apply to the tribunal seeking a declaration that the sum is not recoverable under the general law of contract. Rules 91 and 92 deals with national security issues.

Part 16 concerns a range of other proceedings. Rule 93 deals with interim relief. Rule 94 permits the Department for the Economy to be treated as a party in proceedings dealing with a payment out of the National Insurance Fund. Rule 95 specifies who is to be treated as respondents in certain cases concerning collective agreements. Rule 96 deals with devolution issues; rule 97 with reference to the Court of Justice of the European Union; and rule 98 with proceedings referred to the tribunal by a court. Rule 99 provides a procedure for referring vexatious litigants to the Attorney General for Northern Ireland, who may seek to impose restrictions on that person's ability to bring future legal proceedings. Under rule 100, the Equality Commission for Northern Ireland must generally be sent copies of judgments and written reasons relating to unlawful discrimination in employment. Rule 101 specifies slight changes to the application of the rules in cases involving appeals against industrial training levies. Rule 102 deals similarly with appeals against improvement and prohibition notices imposed for health and safety reasons. Rule 103 caters for cases involving appeals against requirements imposed by the Equality Commission to deal with unlawful discrimination and rule 104 takes a similar approach to applications by the Equality Commission for enforcement of directions it has given or an undertaking it has received in relation to fair employment.

Schedule 2 sets out specific rules with application in national security proceedings.

Schedule 3 sets out specific rules with application in equal pay cases.

Schedule 4 makes revocations and consequential amendments.

A Regulatory Impact Assessment has been prepared and is available from the website of the Department for the Economy at https://www.economy-ni.gov.uk/consultations/employment-tribunals-consultation or alongside this Statutory Rule at http://www.legislation.gov.uk/nisr.

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