STATUTORY INSTRUMENTS

1977 No. 1094

INDUSTRIAL TRIBUNALS

The Industrial Tribunals (Non-Discrimination Notices Appeals) Regulations 1977

Made - - -	*29th June* 1977
Laid before Parliament	*11th July* 1977
Coming into Operation	*5th August* 1977

The Secretary of State in exercise of the powers conferred on him by paragraph 21 of Part III of Schedule 1 to the Trade Union and Labour Relations Act 1974(**a**), as amended by paragraph 22 of Part III of Schedule 16 to the Employment Protection Act 1975(**b**), and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals hereby makes the following Regulations:—

Citation and commencement

1.—(1) These Regulations may be cited as the Industrial Tribunals (Non-Discrimination Notices Appeals) Regulations 1977 and shall come into operation on 5th August 1977.

(2) The Industrial Tribunals (Non-Discrimination Notices Appeals) Regulations 1975(**c**) shall cease to have effect except in relation to proceedings instituted before that date.

Interpretation

2.—(1) The Interpretation Act 1889(**d**) shall apply to these Regulations as it applies to an Act of Parliament as if these Regulations and the Regulations hereby revoked were Acts of Parliament.

(2) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

"the 1974 Act" means the Trade Union and Labour Relations Act 1974 as amended by the Employment Protection Act 1975 and the Trade Union and Labour Relations (Amendment) Act 1976(**e**);

"the 1975 Act" means the Sex Discrimination Act 1975(**f**);

"the 1976 Act" means the Race Relations Act 1976(**g**);

"appellant" means a person who has appealed to a tribunal under section 68 of the 1975 Act or, as the case may be, under section 59 of the 1976 Act;

"the clerk to the tribunal" means the person appointed by the Secretary of the Tribunals or an Assistant Secretary to act in that capacity at one or more hearings;

"decision" in relation to a tribunal includes a direction under section 68(3) of the 1975 Act or, as the case may be, under section 59(3) of the 1976 Act and any other order which is not an interlocutory order;

(**a**) 1974 c. 52. (**b**) 1975 c. 71. (**c**) S.I. 1975/2098 (1975 III, p. 7861).
(**d**) 1889 c. 63. (**e**) 1976 c. 7. (**f**) 1975 c. 65. (**g**) 1976 c. 74.

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

"non-discrimination notice" means a notice under section 67 of the 1975 Act or, as the case may be, under section 58 of the 1976 Act;

"nominated chairman" means a member of the panel of chairmen for the time being nominated by the President;

"the Office of the Tribunals" means the Central Office of the Industrial Tribunals (England and Wales);

"the panel of chairmen" means the panel of persons, being barristers or solicitors of not less than seven years' standing, appointed by the Lord Chancellor in pursuance of Regulation 5(2) of the Industrial Tribunals (England and Wales) Regulations 1965(**a**), as amended(**b**);

"party" means the appellant and the respondent;

"the President" means the President of the Industrial Tribunals (England and Wales) or the person nominated by the Lord Chancellor to discharge for the time being the functions of the President;

"Regional Office of the Industrial Tribunals" means a regional office which has been established under the Office of the Tribunals for an area specified by the President;

"Register" means the Register kept in pursuance of the Industrial Tribunals (Labour Relations) Regulations 1974(**c**);

"respondent" means the Equal Opportunities Commission established under section 53 of the 1975 Act or, as the case may be, the Commission for Racial Equality established under section 43 of the 1976 Act;

"Rule" means a Rule of Procedure contained in the Schedule to these Regulations;

"the Secretary of the Tribunals" and "an Assistant Secretary of the Tribunals" mean respectively the persons for the time being acting as the Secretary of the Office of the Tribunals and as the Assistant Secretary of a Regional Office of the Industrial Tribunals;

"tribunal" means an industrial tribunal (England and Wales) established in pursuance of the Industrial Tribunals (England and Wales) Regulation 1965, as amended, and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President or by a nominated chairman.

Proceedings of tribunals

3. The Rules of Procedure contained in the Schedule to these Regulations shall have effect in relation to appeals to a tribunal under section 68 of the 1975 Act and under section 59 of the 1976 Act against non-discrimination notices relating to matters arising in England and Wales.

Proof of decision of tribunals

4. The production in any proceedings in any court of a document purporting to be certified by the Secretary of the Tribunals to be a true copy of an entry

(**a**) S.I. 1965/1101 (1965 II, p. 2805).

(**b**) The relevant amending instrument is S.I. 1967/301 (1967 I, p. 1040).

(**c**) S.I. 1974/1386 (1974 II, p. 5330).

of a decision in the Register shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Signed by order of the Secretary of State.

29th June 1977.

John Grant,
Joint Parliamentary Under Secretary of State,
Department of Employment.

Regulation 3

SCHEDULE

RULES OF PROCEDURE

Notice of appeal

1. An appeal shall be commenced not later than six weeks after service of the non-discrimination notice, as specified in section 68(1) of the 1975 Act and in section 59(1) of the 1976 Act, by the appellant sending to the Secretary of the Tribunals a notice of appeal which shall be in writing and shall set out:—

(*a*) the name of the appellant and his address for the service of documents;

(*b*) the date of the non-discrimination notice appealed against;

(*c*) the name and address of the respondent;

(*d*) particulars of the requirements appealed against; and

(*e*) the grounds of the appeal.

Action upon receipt of notice of appeal

2. Upon receiving a notice of appeal the Secretary of the Tribunals shall enter particulars of it in the Register and shall forthwith send a copy of it to the respondent and inform the parties in writing of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary of the Tribunals shall be sent.

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

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

(*a*) require a party to furnish in writing to another party further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;

(*b*) grant to a party such discovery or inspection of documents as might be granted by a county court; and

(*c*) require the attendance of any person as a witness or require the production of any document relating to the matter to be determined,

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

(2) The tribunal shall not under paragraph (1) of this Rule require the production of any document certified by the Secretary of State as being a document of which the production would be against the interests of national security.

(3) A person on whom a requirement has been made under paragraph (1) of this Rule may apply to the tribunal either by notice to the Secretary of the Tribunals or at the hearing to vary or set aside the requirement.

(4) No such application to vary or set aside shall be entertained in a case where a time has been appointed under paragraph (1) of this Rule in relation to the requirement unless it is made before the time or, as the case may be, expiration of the time so appointed.

(5) Every document containing a requirement under paragraph (1)(*b*) or (*c*) of this Rule shall contain a reference to the fact that under paragraph 21(6) of Part III of Schedule 1 to the 1974 Act any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine not exceeding £100.

Time and place of hearing

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

(2) Where the President or nominated chairman so directs, the Secretary of the Tribunals shall also send notice of the hearing to such persons as may be directed, but the requirements as to the period of notice contained in the foregoing paragraph of this rule shall not apply to any such notices.

The hearing

5.—(1) Any hearing of or in connection with an appeal shall take place in public unless the tribunal on the application of a party decides that a private hearing is appropriate for the purpose of hearing evidence which relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public or hearing evidence from any person which in the opinion of the tribunal is likely to consist of information the disclosure of which would cause substantial injury to the undertaking of the appellant or of any undertaking in which he works for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 29(1) of the 1974 Act.

(2) In cases to which the foregoing provisions of this Rule apply, a member of the Council on Tribunals in his capacity as such shall be entitled to attend the hearing.

Written representations

6. If a party shall desire to submit representations in writing for consideration by a tribunal at the hearing of the appeal, that party shall send such representations to the Secretary of the Tribunals not less than 7 days before the hearing and shall at the same time send a copy thereof to the other party.

Right of appearance

7. At any hearing of or in connection with an appeal a party may appear before the tribunal in person or may be represented by counsel or by a solicitor or by any other person whom he desires to represent him, including in the case of the appellant a representative of a trade union or an employers' association.

Procedure at hearing

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

(2) If a party shall fail to appear or to be represented at the time and place fixed for the hearing of an appeal, the tribunal may dispose of the appeal in the absence of that party or may adjourn the hearing to a later date: Provided that before disposing of an appeal in the absence of a party the tribunal shall consider any written representations submitted by that party in pursuance of Rule 6.

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

Decision of tribunal

9.—(1) A decision of a tribunal may be taken by a majority thereof and, if the tribunal shall be constituted of two members only, the chairman shall have a second or casting vote.

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

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

(4) The specification of the reasons for the decision shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs and in that event a specification of the reasons shall be sent to the parties and to any superior court in any proceedings relating to such decision together with the copy of the entry.

(5) The Register shall be kept at the Office of the Tribunals and shall be open to the inspection of any person without charge at all reasonable hours.

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

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

(8) If any decision is—

(*a*) corrected under paragraph (6) of this Rule; or

(*b*) reviewed, revoked or varied under Rule 10; or

(*c*) altered in any way by order of a superior court,

the Secretary of the Tribunals shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties.

Review of tribunal's decision

10.—(1) A tribunal shall have power on the application of a party to review and to revoke or vary by certificate under the chairman's hand any of its decisions in a case in which a county court has power to order a new trial on the grounds that—

(*a*) the decision was wrongly made as a result of an error on the part of the tribunal staff; or

(*b*) a party did not receive notice of the proceedings leading to the decision; or

(*c*) the decision was made in the absence of a party; or

(*d*) new evidence has become available since the making of the decision provided that its existence could not have been reasonably known of or foreseen; or

(*e*) the interests of justice require such a review.

(2) An application for the purposes of paragraph (1) of this Rule may be made at the hearing. If the application is not made at the hearing, such application shall be

made to the Secretary of the Tribunals at any time from the date of the hearing until 14 days after the date on which the decision was sent to the parties and must be in writing stating the grounds in full.

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

(4) If such an application is not refused under paragraph (3) of this Rule, it shall be heard by the tribunal and if it is granted the tribunal shall either vary its decision or revoke its decision and order a re-hearing.

(5) The clerk to the tribunal shall send to the Secretary of the Tribunals the certificate of the chairman as to any revocation or variation of the tribunal's decision under this Rule. The Secretary of the Tribunals shall as soon as may be make such correction as may be necessary in the Register and shall send a copy of the entry to each of the parties.

Costs

11.—(1) A tribunal may make an order that a party shall pay to another party either a specified sum in respect of the costs of or in connection with an appeal incurred by that other party or, in default of agreement, the taxed amount of those costs.

(2) Any costs required by an order under this Rule to be taxed may be taxed in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as shall be directed by the order.

Miscellaneous powers of tribunal

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

(2) A tribunal may, if it thinks fit—

(*a*) postpone the day or time fixed for, or adjourn, any hearing;

(*b*) before granting an application under Rule 3 or 10 require the party making the application to give notice thereof to the other party;

(*c*) either on the application of any person or of its own motion, direct any other person to be joined as a party to the appeal (giving such consequential directions as it considers necessary), but may do so only after having given to the person proposed to be joined a reasonable opportunity of making written or oral objection;

(*d*) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;

(*e*) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;

(*f*) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(3) Any act, other than the hearing of an appeal or of an application for the purposes of Rule 10(1), required or authorised by these Rules to be done by a tribunal may be done by, or on the direction of, the President, the chairman of the tribunal or a nominated chairman.

(4) Rule 11 shall apply to an order dismissing proceedings under paragraph (2) of this Rule.

(5) Any functions of the Secretary of the Tribunals may be performed by an Assistant Secretary of the Tribunals.

Notices, etc.

13.—(1) Any notice given under these Rules shall be in writing and all notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraphs (3) and (4) of this Rule) or delivered to or at—

(*a*) in a case of a document directed to the Secretary of the Tribunals, the Office of the Tribunals or such other office as may be notified by the Secretary of the Tribunals to the parties;

(*b*) in the case of a document directed to a party, his address for service specified in the notice of appeal or in a notice under paragraph (2) of this Rule or (if no address for service is so specified), his last known address or place of business in the United Kingdom or, if the party is a corporation, the corporation's registered or principal office;

(*c*) in the case of a document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the United Kingdom, or if such a person is a corporation, the corporation's registered or principal office;

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

(2) A party may at any time by notice to the Secretary of the Tribunals and to the other party change his address for service under these Rules.

(3) Where a notice of appeal is not delivered, it shall be sent by the recorded delivery service.

(4) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this Rule, the President or a nominated chairman may make an order for substituted service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this Rule.

EXPLANATORY NOTE

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

These Regulations set out the rules of procedure of industrial tribunals in England and Wales for the determination of appeals against non-discrimination notices issued under the Sex Discrimination Act 1975 and under the Race Relations Act 1976

The Industrial Tribunals (Non-Discrimination Notices Appeals) Regulations 1975, which set out the rules of procedure of industrial tribunals in England and Wales for the determination of appeals against non-discrimination notices issued under the Sex Discrimination Act 1975, are revoked except in relation to proceedings instituted before 5th August 1977.

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