STATUTORY INSTRUMENTS

# 1965 No. 2021

# INDUSTRIAL TRIBUNALS

## The Industrial Tribunals (Redundancy Payments) (Scotland) Regulations 1965

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| *Made* - - - - | *29th November* 1965 |
| *Laid before Parliament* | *3rd December* 1965 |
| *Coming into Operation* | *6th December* 1965 |

The Minister of Labour in exercise of the powers conferred on him by section 46 of the Redundancy Payments Act 1965(a) and after consultation with the Council on Tribunals hereby makes the following Regulations:—

*Citation and commencement*

**1.** These Regulations may be cited as the Industrial Tribunals (Redundancy Payments) (Scotland) Regulations 1965 and shall come into operation on 6th December 1965.

*Interpretation*

**2.**—(1) The Interpretation Act 1889(b) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act 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 Act " means the Redundancy Payments Act 1965 ;

" applicant " means a person (including the Minister) who in pursuance of Rule 1 has sent an initiating application to the Secretary of the Tribunals for a decision of a tribunal ;

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

" 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 reference ;

" the Minister " means the Minister of Labour ;

" the Office of the Tribunals " means the Central Office of the Industrial Tribunals (Scotland) ;

" the President " means the President of the Industrial Tribunals (Scotland) or the person nominated by the Lord President of the Court of Session to discharge for the time being the functions of the President ;

" rebate " means a payment referred to as such in section 30 of the Act ;

" the Register " means the Register of Applications and Decisions kept in pursuance of these Regulations ;

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

(a) 1965 c. 62. (b) 52 & 53 Vict. c. 63.

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

"the Secretary of the Tribunals" means the Secretary of the Central Office of the Industrial Tribunals (Scotland) for the time being;

"tribunal" means an industrial tribunal (Scotland) established in pursuance of the Industrial Tribunals (Scotland) Regulations 1965(a) and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President.

(3) A form referred to by number means the form so numbered in the Appendix to the Schedule to these Regulations.

*Procedure of tribunals*

**3.**—(1) The Rules of Procedure contained in the Schedule to these Regulations shall have effect in relation to proceedings to which this Regulation applies.

(2) This Regulation applies to proceedings in pursuance of references or appeals under Part I or Part II or section 40 or section 42 of the Act—

(*a*) as to the right of any person to a redundancy payment, to a payment under an agreement, or to a payment to which section 42 of the Act applies, or as to the amount of any such payment;

(*b*) as to the liability of any person to make an employer's payment, that is to say, a payment falling within paragraph (*a*), paragraph (*b*) or paragraph (*c*) of section 30(1) of the Act;

(*c*) as to the amount of the rebate payable in accordance with Schedule 5 to the Act;

(*d*) as to the amount of the sum payable in accordance with Schedule 6 to the Act; or

(*e*) against the Minister's withholding, or reducing the amount of, a rebate,

being proceedings—

(i) the respondent or one of the respondents to which is a person (other than the Minister) who resides or carries on business, or

(ii) which relate to a contract of employment the place of execution or performance of which is,

in Scotland.

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

Dated 29th November 1965.

*R. J. Gunter,*
Minister of Labour.

(a) S.I. 1965/1157 (1965 II, p. 3266).

## SCHEDULE

### RULES OF PROCEDURE

*Initiating application*

1. Proceedings for the determination by a tribunal of any question or appeal shall be instituted by the applicant sending to the Secretary of the Tribunals an initiating application which shall be substantially in accordance with Form 1 and shall set out the grounds of the application.

*Registering of initiating application*

2. Upon receiving an initiating application the Secretary of the Tribunals shall enter particulars of it in the Register and shall forthwith send a copy of it to the respondent or respondents (and to the Minister if he is not a party) and shall inform the applicant and the respondent or respondents (and the Minister if he is not a party) in writing of the case number of the initiating application entered in the Register which shall thereafter constitute the title of the proceedings. The copy of the initiating application sent by the Secretary of the Tribunals to a respondent shall be accompanied by a notice substantially in accordance with Form 2, a copy of which shall also be sent by the Secretary to the applicant (and to the Minister if he is not a party).

*Appearance by respondent*

3.—(1) A respondent shall within 14 days of receiving the copy initiating application enter an appearance to the proceedings by sending to the Secretary of the Tribunals a notice of appearance which shall be substantially in accordance with Form 3 stating whether he intends to resist the application and, if so, on what grounds. Upon receipt of a notice of appearance the Secretary of the Tribunals shall forthwith send a copy of it to the other party or parties (and to the Minister if he is not a party).

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

(i) to apply under Rule 12(1) for an extension of the time appointed by this Rule for entering an appearance ; and

(ii) to be sent a copy of a decision or corrected decision in pursuance of Rule 9(3) or 9(6),

and accordingly (without prejudice to the generality of this provision) he shall not be entitled—

(*a*) to make an application under Rule 4 ;

(*b*) to notice of the date, time and place of the hearing in pursuance of Rule 5 ;

(*c*) to submit representations in writing for consideration by the tribunal in pursuance of Rule 6(2) ;

(*d*) to be heard or represented at the hearing in pursuance of Rule 7 or 8 ;

(*e*) to enter into a written agreement in pursuance of Rule 11(1)(*d*) ; or

(*f*) to apply for directions in pursuance of Rule 12(2) or to receive a notice in pursuance of Rule 12(4).

*Power to require further particulars and attendance of witnesses and to order recovery of documents*

4.—(1) Subject to Rule 3(2), the tribunal may on the application of a party to the proceedings (or of the Minister if he is not a party), or in either case of a person qualified under Rule 7 to represent him at the hearing, 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 (and to the Minister if he is not a party) further particulars of the grounds on which he relies and of any facts and contentions relevant thereto ;

(*b*) grant to a party (or to the Minister if he is not a party) such a commission and diligence for the recovery of documents as might be granted by the sheriff ; and

(*c*) require the attendance of any person (including a party to the proceedings) as a witness or require the production of any document relating to the question or appeal 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) Every document containing a requirement under sub-paragraph (*b*) or sub-paragraph (*c*) of the preceding paragraph of this Rule shall contain a reference to the fact that under section 46(4) of the Act any person who without reasonable excuse fails to comply with any such requirement is liable on summary conviction to a fine not exceeding £50 or imprisonment for a term not exceeding three months or both.

*Time and place of hearing*

5. The President shall fix the date, time and place of the hearing and the Secretary of the Tribunals shall not less than 14 days before the date so fixed (subject to Rule 3(2)) send to each party (and to the Minister if he is not a party) a notice substantially in accordance with Form 4.

*The hearing*

6.—(1) The hearing of an initiating application shall take place in public, unless the tribunal determines at the request of a party to hear the application in private, but a member of the Council on Tribunals shall be entitled to attend the hearing in his capacity as such member.

(2) Subject to Rule 3(2), if a party shall desire to submit representations in writing for consideration by the tribunal at the hearing 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 or parties (and to the Minister if he is not a party).

*Representation*

7.—(1) Subject to Rule 3(2), at the hearing a party may appear and may be heard in person or be represented by counsel or solicitor or by a representative of a trade union or of an employers' association or with the leave of the tribunal by any other person.

(2) The Minister if he so elects shall be entitled to appear and be heard on the hearing notwithstanding that he is not a party and may be represented by any officer of the Ministry or by counsel or solicitor.

*Procedure at hearing*

8.—(1) Subject to Rule 3(2), parties (and the Minister if he is not a party and he elects to appear) shall be entitled to make opening statements, to call witnesses, to cross-examine any witnesses called by any other party (or by the Minister if he is not a party) and to address the tribunal.

(2) Subject to Rule 3(2), a party may if he so desires give evidence on his own behalf.

(3) Without prejudice to the right of the Minister to appear and be heard, if a party shall fail to appear or to be represented at the time and place fixed for the hearing, the tribunal may dispose of the application in the absence of that party or may adjourn the hearing to a later date: Provided that before disposing of an application in the absence of a party the tribunal shall consider any representations submitted by that party in pursuance of Rule 6(2).

(4) The tribunal may require any witnesses to give evidence on oath or affirmation, and for that purpose the chairman may administer an oath or affirmation in due form.

*Decision of tribunal*

9.—(1) A decision of the tribunal may be taken by a majority thereof and, if in accordance with regulation 5(1) of the Industrial Tribunals (Scotland)

Regulations 1965 the tribunal shall be constituted of two members only, the chairman shall have a second or casting vote.

(2) The decision of the 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 (and to the Minister if he is not a party).

(4) 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.

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

(6) A copy of any decision so corrected shall be sent by the clerk to the tribunal with a certificate of the chairman to the Secretary of the Tribunals who shall thereupon enter the correction in the Register and shall send a copy of the corrected entry to each party (and to the Minister if he is not a party).

*Expenses*

10.—(1) The tribunal shall not normally award expenses but where in its opinion a party to the proceedings (and if he is a respondent whether or not he has entered an appearance) has acted frivolously or vexatiously the tribunal may include in its decision—

(*a*) an order that that party shall pay to another party (or to the Minister if he is not a party) either a specified sum in respect of the expenses incurred by that other party (or, as the case may be, by the Minister) or the amount of those expenses to be taxed in default of agreement;

(*b*) an order that that party shall pay to the Minister a specified sum in respect of the whole, or any part of, any allowances (other than allowances paid to members of tribunals) paid by the Minister under section 12(3) of the Industrial Training Act 1964 (as amended by section 46(5) of the Act) to any person for the purposes of, or in connection with, his attendance at the tribunal.

(2) Any expenses required by an order under paragraph (1) of this Rule to be taxed may be taxed in the sheriff court according to such of the scales prescribed by sheriff court rules for civil proceedings in the sheriff court as shall be directed by the order.

*Miscellaneous powers of tribunal*

11.—(1) The tribunal may, if it thinks fit,—

(*a*) extend the time appointed by these Rules for doing any act notwithstanding that the time appointed may have expired;

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

(*c*) if the applicant shall at any time give notice of the abandonment of his initiating application, dismiss the proceedings;

(*d*) if both or all the parties (and the Minister if he is not a party) agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(2) Subject to the provisions of these Rules the tribunal may regulate its own procedure and may, if it thinks fit, before granting an application under Rule 4 or 12 require the party making the application to give notice of it to the other party or parties (and to the Minister if he is not a party) or if the application is made by the Minister require him to give notice of it to the parties. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made being an address and time specified for the purposes of the application by the tribunal.

(3) Any act, other than the determination of a reference, required or authorised by these Rules to be done by the tribunal may be done by, or on the direction of, the President or the chairman of the tribunal.

*Applications*

12.—(1) An application to the tribunal for an extension of the time appointed by these Rules for doing any act may be made by a party either before or after the expiration of any time so appointed.

(2) Subject to Rule 3(2), a party (or the Minister if he is not a party) may at any time apply to the tribunal for directions on any matter arising in connection with the proceedings.

(3) An application under the foregoing provisions of this Rule shall be made by sending to the Secretary of the Tribunals a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(4) Subject to Rule 3(2), the tribunal shall give notice to both or all the parties (and to the Minister if he is not a party) of any extension of time granted or any directions given in pursuance of this Rule.

*Notices, etc.*

13.—(1) Any notice required by 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 may be sent by the recorded delivery service or delivered—

(*a*) in the case of a document directed to the Secretary of the Tribunals, to the Office of the Tribunals;

(*b*) in the case of a document directed to the Minister in proceedings to which he is not a party, to the offices of the Ministry of Labour at Stuart House, 30 Semple Street, Edinburgh, 3;

(*c*) in the case of a document directed to a party, to his address for service specified in the initiating application or, as the case may be, notice of appearance under these Rules, or to his last known address or place of business in the United Kingdom or, if the party is a corporation, to 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 or parties (and to the Minister if he is not a party) change his address for service under these Rules.

## APPENDIX

### FORM 1

### INDUSTRIAL TRIBUNALS (REDUNDANCY PAYMENTS) (SCOTLAND) REGULATIONS 1965

### INITIATING APPLICATION FOR THE DETERMINATION OF A QUESTION OR APPEAL UNDER THE REDUNDANCY PAYMENTS ACT 1965

To

The Secretary of the Central Office
of the Industrial Tribunals (Scotland),

.....

.....

I/We*.....of.....
hereby apply under the above-mentioned Regulations for a decision of a tribunal to the following effect:—

The name(s)* and address(es)* of the person(s)* against whom this decision is sought are.....

.....

The grounds of this application are as follows:—

‡All communications with regard to this initiating application should be addressed to me/us* at†.....

.....

to my/our* Solicitor(s)/Agent(s)*, Mr./Messrs.*

.....at†.....

.....

Dated.....19.....

Signed.....
Applicant(s).

* Delete if inapplicable.

† Insert address as applicable.

‡ When the initiating application is heard by the tribunal the parties (other than a respondent who has not entered an appearance) may appear and be heard in person or be represented by counsel or solicitor or by a representative of a trade union or of an employers' association or with the leave of the tribunal by any other person.

FORM 2

INDUSTRIAL TRIBUNALS (REDUNDANCY PAYMENTS) (SCOTLAND) REGULATIONS 1965

NOTICE OF INITIATING APPLICATION

Case No. .....

Central Office of the Industrial Tribunals (Scotland),

.....

.....

I send you herewith a copy of an initiating application in which a decision of a tribunal is sought against you.

The proceedings on this initiating application will be regulated by the rules of procedure contained in the Industrial Tribunals (Redundancy Payments) (Scotland) Regulations 1965. The case number of this initiating application which is indicated above should be quoted in any communication to me with regard to these proceedings.

Under the rules you are required to enter an appearance within 14 days of receiving the copy initiating application. You can do this by filling in and sending to me the enclosed form of notice of appearance.

The notice of appearance when completed should be sent by post by the recorded delivery service or delivered to me at the address mentioned at the head of this notice, stating the case number of the proceedings.

If you do not enter an appearance you will not be entitled to take any part in the proceedings (except to apply for an extension of the time appointed by the rules for entering an appearance) or to receive any further notice of the proceedings and a decision (which may be registered for execution and enforced against you) may be given against you in your absence. Whether or not you enter an appearance you will be sent a copy of the tribunal's decision.

When the initiating application is heard by the tribunal the parties (other than a respondent who has not entered an appearance) may appear and be heard in person or be represented by counsel or solicitor or by a representative of a trade union or of an employers' association or with the leave of the tribunal by any other person.

Dated ..... 19.....

Signed .....
Secretary.

To the Respondent(s) .....

FORM 3

INDUSTRIAL TRIBUNALS (REDUNDANCY PAYMENTS) (SCOTLAND) REGULATIONS 1965

NOTICE OF APPEARANCE BY RESPONDENT

CASE NO. .....

To
The Secretary of the Central Office
of the Industrial Tribunals (Scotland),

.....

.....

I/We*..... of ..... hereby give notice that I/we* *intend to resist / *do not intend to resist the initiating application made by.....

.....

*The grounds on which I/we* intend to resist the said initiating application are as follows:—

All communications with regard to the above-mentioned initiating application should be addressed to me/us* at†.....

to my/our* Solicitor(s)/Agent(s)*, Mr./Messrs.*.....

..... at†.....

Dated ..... 19.....

Signed .....
Respondent(s).

*Delete if inapplicable.
†Insert address as applicable.

FORM 4

INDUSTRIAL TRIBUNALS (REDUNDANCY PAYMENTS) (SCOTLAND) REGULATIONS 1965

NOTICE OF HEARING

Case No. .....
Tribunal.....

Central Office of the Industrial Tribunals (Scotland),

.....

.....

NOTICE IS HEREBY GIVEN that the initiating application of .....

..... dated ..... will be heard by an Industrial Tribunal at ..... on the ..... day of ..... 19..... at ..... o'clock in the .....noon or as soon thereafter as may be.

In his own interest each party should appear at the hearing with his witnesses (if any) at the above time and place and bring with him all documents on which he intends to rely.

Each party (other than a respondent who has not entered an appearance) is entitled to be represented by counsel or solicitor or by a representative of a trade union or of an employers' association or with the leave of the tribunal by any other person.

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

Dated ..... 19.....

Signed .....
Secretary.

To the Applicant(s) and Respondent(s) .....
[and to the Minister]

## EXPLANATORY NOTE

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

These Regulations regulate the procedure of industrial tribunals for Scotland on references under the Redundancy Payments Act 1965.