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*

The Department for the Economy(**1**), in exercise of the powers conferred by Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978(**2**), Articles 3(1) and (3)(**3**), 6(6)(**4**) and (6A)(**5**), 9(1), (3)(**6**), (3ZA)(**7**), (3A), (3AA), (3AB)(**8**), (3B), (3C)(**9**) and (5), 9A(1) and (2)(**10**), 11(1)(**11**), (2) and (4)(**12**), 12(2), (5), (6) and (7), 12A(1)(**13**), 13(1) and (1B)(**14**), 14(2), 15(**15**), 15A(**16**), 21(**17**), 21A(9)(**18**) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(**19**), and Articles 81(**20**), 82(5)(**21**) and (7), 84(1), (2)(**22**), (2A)(**23**), (2B)(**24**), (3) and (5),

(**1**) 2016 c. 5 (N.I.).
(**2**) 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.
(**3**) Article 3(3) was amended by the Employment Act (Northern Ireland) 2016 (c. 15), section 11.
(**4**) Article 6(6) was amended by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 16(3).
(**5**) Article 6A was inserted by S.I. 1998/1265 (N.I. 8), Article 4(5).
(**6**) Article 9(3)(f) was modified by S.I. 2003/2902 (N.I. 15), Article 3(1).
(**7**) Article 9(3ZA) was inserted by S.I. 2003/2902 (N.I. 15), Article 4.
(**8**) Article 9(3AA) and (3AB) was inserted by 2011 c. 13 (N.I.), section 5.
(**9**) 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.
(**10**) Article 9A was inserted by S.I. 2003/2902 (N.I. 15), Article 6.
(**11**) Article 11(1)(a) is amended by S.I. 2003/2902 (N.I. 15), Article 7(2), from a date to be appointed.
(**12**) Article 11(2)(a) was amended by S.R. 2004 No. 157.
(**13**) 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.
(**14**) Article 13(1) was substituted and Article 13(1B) inserted by 2011 c. 13 (N.I.), s. 6(3).
(**15**) 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.
(**16**) Article 15A was inserted by S.I. 2003/2902 (N.I. 15), Article 8(2).
(**17**) 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.
(**18**) Article 21A was inserted by 2011 c. 13 (N.I.), section 10.
(**19**) S.I. 1996/1921 (N.I. 18).
(**20**) Article 81(1) was amended by S.I. 2003/2902 (N.I. 15), Schedule 5, paragraph 4(3).
(**21**) Article 82(5) was amended by 2016 c. 15(N.I.) , section 12.
(**22**) Article 84(2) was amended by S.I. 2003/2902 (N.I. 15), Articles 9(2), 13(2) and 14(2) and Schedule 6.
(**23**) Article 84(2A) was inserted by S.I. 2003/2902 (N.I. 15), Article 9(1).

84A(**25**), 84B(1) and (2)(**26**), 85A, 85B(**27**), 88A(9)(**28**) and 104(3) of the Fair Employment and Treatment (Northern Ireland) Order 1998(**29**), and now vested in it(**30**), 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.

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;

(**24**) Article 84(2B) was inserted by S.I. 2003/2902 (N.I. 15), Article 10(1).
(**25**) Article 84A was inserted by S.I. 2003/2902 (N.I. 15), Article 12.
(**26**) Article 84B was inserted by S.I. 2003/2902 (N.I. 15), Article 13(1).
(**27**) Articles 85A and 85B were inserted by S.I. 2003/2902 (N.I. 15), Article 14(1).
(**28**) Article 88A was inserted by 2011 c. 13 (N.I.), section 14.
(**29**) S.I. 1998/3162 (N.I. 21).
(**30**) Functions relevant to these regulations were transferred from the Department for Employment and Learning by S.R. 2016 No. 76, Article 6(1)(c).

"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—