STATUTORY RULES OF NORTHERN IRELAND

2011 No. 162

FAIR EMPLOYMENT

The Fair Employment Tribunal (Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2011

Made - - - -	*24th March 2011*
Coming into operation	*3rd April 2011*

The Department for Employment and Learning(**1**)makes the following Regulations in exercise of the powers conferred by Article 84(1), (2)(h), (2A)(a), (2B) and (3) of the Fair Employment and Treatment (Northern Ireland) Order 1998(**2**) and now vested in it(**3**).

Citation and commencement

1. These Regulations may be cited as the Fair Employment Tribunal (Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2011 and shall come into operation on 3rd April 2011.

Amendment of Schedule 1 to the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005

2.—(1) Schedule 1 to the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005(**4**) is amended in accordance with paragraphs (2) to (14).

(2) In rule 1 (starting a claim) –

(a) in paragraph (1) omit "(subject to paragraph (5))";

(b) in paragraph (4) for "Subject to paragraph (5), the required information" substitute "The required information";

(c) in paragraph (4)(e) after the semicolon add "and";

(d) in paragraph (4)(f) for the semicolon substitute a full stop;

(e) omit paragraphs (4)(g) and (h);

(f) omit paragraphs (5) and (7).

(3) In rule 2 (what the Tribunal does after receiving the claim), in paragraph (2)(e) after the semicolon add "and".

(**1**) Formerly the Department of Higher and Further Education, Training and Employment; *See*2001 c. 15 (N.I.), section 1(1).
(**2**) S.I. 1998/3162 (N.I. 21); Article 84(2A) and (2B) were inserted by S.I. 2003/2902 (N.I. 15), Articles 9(1) and 10(1).
(**3**) S.R. 1999 No. 481, article 4(b) and Part II of Schedule 2.
(**4**) S.R. 2005 No. 151 as amended by S.R. 2005 No. 579, 2009 c. 3 and 2010 c. 3 (N.I.).

(4) in rule 3 (when the claim will not be accepted by the Secretary) –

(a) in paragraph (1)(a) after the semicolon add "or";

(b) in paragraph (1)(b) from the semicolon to the end substitute a full stop;

(c) omit paragraph (1)(c);

(d) omit paragraph (5);

(e) in paragraph (6) omit "(5) and".

(5) In rule 4 (responding to the claim) –

(a) in paragraph (1) for "paragraph (5)" substitute "paragraphs (5) to (5C)";

(b) for paragraph (5) substitute –

"(5) The respondent may apply for an extension of the time limit within which he is to present his response and he must, at the same time as the application is sent to the Office of the Tribunals, provide all other parties with details of the application and the reasons why it is made and confirm in writing to the Office of the Tribunals that he has done so.

(5A) If the application under paragraph (5) is presented to the Office of the Tribunals within 28 days of the date on which the respondent was sent a copy of the claim, it must explain why the respondent cannot comply with the time limit.

(5B) If the application under paragraph (5) is presented to the Office of the Tribunals more than 28 days after the date on which the respondent was sent a copy of the claim, it must explain why the respondent did not comply with the time limit and be accompanied by a completed response which includes all the required information specified in paragraph (4).

(5C) The chairman shall only extend the time limit within which a response must be presented if he is satisfied that it is just and equitable to do so.

(5D) Where a respondent's application under paragraph (5) is refused the Secretary shall inform the parties in writing of such refusal unless the application is refused at a hearing.

(5E) If the chairman makes an order extending or refusing to extend the time within which a response must be presented, any application to set it aside must be made in writing to the Office of the Tribunals within 7 days of the date on which the order was sent to the parties.";

(c) after paragraph (7) add –

"(8) This rule is subject to section 12 of the State Immunity Act 1978."(**5**).

(6) In rule 6 (when the response will not be accepted by the Secretary) –

(a) in paragraph (2) after "in accordance with the criteria in paragraph (1)" insert ", read with rule 4(5C),";

(b) in paragraph (5), for "should have been" substitute "is to be".

(7) In rule 7 (default judgements) –

(a) for paragraph (1) substitute –

"(1) Subject to paragraphs (2A) and (6), if the relevant time limit for presenting a response in any proceedings has expired, a chairman may, in the circumstances set out in paragraph (2), issue a default judgement to determine the claim without a hearing.";

(b) in paragraph (2)(b) omit "so";

(**5**) 1978 c. 33.

(c) after paragraph (2) insert –

"(2A) No default judgement need be issued where the chairman –

(a) is not satisfied that the tribunal has jurisdiction to consider the claim, or part of it; or

(b) has sufficient evidence to conclude that the claim form has not been received by the respondent.";

(d) in paragraph (4) after "The Secretary shall also inform the parties of their right to" insert "apply to";

(e) for paragraph (6) substitute –

"(6) A default judgement shall not be issued where the parties have settled the proceedings (either by means of a compromise agreement or through the Agency). If a default judgement is issued in these circumstances it shall have no effect.".

(8) In rule 9 (general power to manage proceedings) –

(a) for paragraph (2)(e) substitute –

"(e) except where otherwise provided in these Rules, extending any time limit, whether or not expired;";

(b) in paragraph (8) between "shall" and "inform" insert "(except where the order is for a witness order described in rule 9(2)(c) only)".

(9) In rule 10 (applications in proceedings) –

(a) in paragraph (4) for "(except where the application is for a witness order described in rule 9(2)(c) only)" substitute "(except where the application is for an order extending the time limit within which a response must be presented under rule 4(5) or a witness order described in rule 9(2)(c))";

(b) in paragraph (4)(a) for "sought" substitute "made";

(c) for paragraph (4)(b) substitute –

"(b) notification that any objection to the application must be sent to the Office of the Tribunals within 7 days of receiving the application or, if a hearing of any type is due to take place before the expiry of that 7 day period, before the date of that hearing; and";

(d) after paragraph (4) insert –

"(4A) The time limit described in paragraph (4)(b) may be varied where the chairman or tribunal considers it in the interests of justice to do so.";

(e) for paragraph (5) substitute –

"(5) Where a party is not legally represented in relation to the application, the Secretary shall (except where the application is for an order extending the time limit within which a response must be presented under rule 4(5) or a witness order described in rule 9(2)(c)) send a copy of the application to all other parties and inform them of the requirements set out in paragraph (4)(b) and (c).".

(10) In rule 21 (right to withdraw proceedings), in paragraph (4) for the words from "The proceedings or the relevant part of the proceedings so withdrawn cannot be continued" to the end substitute "The claimant may not commence a further claim against the respondent for the same, or substantially the same, cause of action in the tribunal (unless the decision to dismiss is successfully reviewed or appealed).".

(11) After rule 21 (right to withdraw proceedings) insert –