STATUTORY RULES OF NORTHERN IRELAND

2011 No. 161

EMPLOYMENT

The Industrial Tribunals (Constitution and 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 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978(**2**) and Articles 3(1), 6(6)(**3**), and (6A)(**4**), 9(1), (2), (3)(**5**), (3ZA)(**6**), (3A)(**7**) and (5), 11(1)(**8**) and (4), 13(1) and (1B)(**9**), 21(**10**) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(**11**) and now vested in it(**12**).

Citation and commencement

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

Amendment of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005

2. The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005(**13**) shall be amended as set out in regulations 3 to 8.

(**1**) Formerly the Department of Higher and Further Education, Training and Employment; *See*2001 c. 15 (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 6(6) was amended by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 16(3).
(**4**) Article 6A was inserted by S.I. 1998/1265 (N.I. 8), Article 4(5).
(**5**) Article 9(3)(f) was modified by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 18(2) and Schedule 2, and by S.I. 2003/2902 (N.I. 15), Article 3(1).
(**6**) Article 9(3ZA) was inserted by S.I. 2003/2902 (N.I. 15), Article 4.
(**7**) Article 9(3A) was inserted by S.I. 1998/1265 (N.I. 8), Article 3 and modified by S.I. 2003/2902 (N.I. 15), Article 5.
(**8**) Article 11(1) was amended by S.I. 2003/2902 (N.I. 15), Article 7(2).
(**9**) Article 13, paragraph (1) was amended and paragraph (1B) was inserted by 2011 c. 13 (N.I.), s. 6(3).
(**10**) 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 and by 2011 c. 13 (N.I.), s. 9(2).
(**11**) S.I. 1996/1921 (N.I. 18).
(**12**) *See*S.R. 1999 No. 481.
(**13**) S.R. 2005 No. 150 as amended by S.R. 2005 No. 376, S.R. 2005 No. 578, S.R. 2006 No. 261, S.R. 2007 No. 340, S.R. 2007 No. 494, 2009 c. 3 and 2010 c. 3 (N.I.).

Amendment of Regulations

3.—(1) In regulation 2, after the definition of "the Disability Discrimination Act", insert –

""the Employment Rights Order" means the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16));".

(2) After regulation 9 insert –

"**Power of Fair Employment Tribunal to exercise functions of industrial tribunal**

9A.—(1) This regulation applies where, under Article 85 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (S.I. 1998/3162 (N.I. 21)), the President or Vice-President has directed that a matter that would otherwise fall to be determined by a tribunal shall be heard and determined by the Fair Employment Tribunal.

(2) Any function of the tribunal specified in these regulations and in Schedules 1 to 6 may be carried out by the Fair Employment Tribunal as though it were a tribunal constituted under these Regulations.".

Amendment of Schedule 1

4.—(1) Schedule 1 is amended as set out in paragraphs (2) to (19).

(2) In rule 1 –

(a) in paragraph (1) delete "paragraph (5) and";

(b) in paragraph (4) delete "paragraph (5) and to";

(c) in paragraph (4)(g) at the end insert "and";

(d) in paragraph (4)(h) for ";" substitute ".";

(e) delete paragraphs (4)(i) to (k);

(f) delete paragraphs (5), (6) and (8).

(3) In rule 2 in paragraph (2) –

(a) delete sub-paragraph (e);

(b) in sub-paragraph (f) at the end insert "and".

(4) in rule 3 –

(a) at the end of paragraph (1)(a) insert "or";

(b) in paragraph (1)(b) for "; or" substitute ".";

(c) delete paragraph (1)(c);

(d) delete paragraph (5);

(e) in paragraph (6) for "paragraphs (5) and (7)" substitute "paragraph (7)".

(5) In rule 4 –

(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) insert –

"(8) This rule is subject to section 12 of the State Immunity Act 1978."(**14**).

(6) In rule 6 –

(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 8 –

(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) delete "so";

(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 10 –

(a) for paragraph (2)(e) substitute –

(**14**) 1978 c. 33.

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

(b) delete paragraph (2)(g);

(c) in paragraph (8) between "shall" and "inform" insert "(except where the order is for a witness order described in rule 10(2)(c) only)".

(9) In rule 11 –

(a) in paragraph (4) for "(except where the application is for a witness order described in rule 10(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 10(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 10(2)(c)) send a copy of the application to all other parties and inform them of the matters listed in paragraph (4)(b) and (c).".

(10) In rule 14 after paragraph (1)(b) insert –

"(bb) a hearing dealing with interim relief as described in rule 18A;".

(11) In rule 18 –

(a) in paragraph (2)(d) for ";" substitute ".";

(b) delete paragraph (2)(e);

(c) in paragraph (3) delete "and (2)".

(12) After rule 18 insert –

"**Interim relief**

18A.—(1) Hearings dealing with interim relief are interim hearings.

(2) Subject to the provisions applying to interim relief of the Employment Rights Order and the Industrial Tribunals Order, these rules shall apply when dealing with the following applications as they apply to pre-hearing reviews –

(a) an application made under Article 163 of the Employment Rights Order for interim relief;

(b) an application made under Article 166 of the Employment Rights Order to vary or revoke an order.".

(13) Delete rules 22 to 24.