STATUTORY RULES OF NORTHERN IRELAND

2005 No. 151

FAIR EMPLOYMENT

The Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005

Made - - - -	*22nd March 2005*
Coming into operation	*3rd April 2005*

The Department for Employment and Learning(**1**), in exercise of the powers conferred on it by Articles 81(1) and (2), 82(5) and (7), 84(1), (2), (2A)(**2**), (2B)(**3**), (3), (4)(**4**) and (5), 84A(**5**), 84B(1) and (2)(**6**), 85A and 85B(1) and (2)(**7**) of the Fair Employment and Treatment (Northern Ireland) Order 1998(**8**), and now vested in it(**9**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005 and the Rules of Procedure contained in Schedules 1, 2 and 3 to these Regulations may be referred to, respectively as –

(a) the Fair Employment Tribunal Rules of Procedure;

(b) the Fair Employment Tribunal (Appeals) Rules of Procedure; and

(c) the Fair Employment Tribunal (Enforcement) Rules of Procedure.

(2) These Regulations shall come into operation on 3rd April 2005.

(3) Subject to the savings in regulation 13, the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2004(**10**) are revoked.

(**1**) Formerly the Department of Higher and Further Education, Training and Employment; *see*2001 c. 15 (N.I.)
(**2**) Article 84(2A) was inserted by S.I.2003/2902 (N.I. 15), Article 9(1)
(**3**) Article 84(2B) was inserted by S.I. 2003/2902 (N.I. 15), Article 10(1)
(**4**) Article 84(4) was modified by S.I. 2003/2902 (N.I. 15), Article 11(1)
(**5**) Article 84A was inserted by S.I. 2003/2902 (N.I. 15), Article 12
(**6**) Article 84B was inserted by S.I. 2003/2902 (N.I. 15), Article 13(1)
(**7**) Articles 85A and 85B were inserted by S.I. 2003/2902 (N.I. 15), Article 14(1)
(**8**) S.I. 1998/3162 (N.I. 21)
(**9**) *See*S.R. 1999 No. 481
(**10**) S.R. 2004 No. 164

Interpretation

2.—(1) In these Regulations and in Schedules 1, 2 and 3 –

"the Fair Employment and Treatment Order" means the Fair Employment and Treatment (Northern Ireland) Order 1998;

"the Employment Order" means the Employment (Northern Ireland) Order 2003(**11**);

"allowances" means any allowances payable under Article 83(2) of the Fair Employment and Treatment Order;

"chairman" means the President, the Vice-President or a member of the panel of chairmen of the Fair Employment Tribunal appointed in accordance with Article 82(1) of the Fair Employment and Treatment Order and referred to in regulation 5(1)(c), and in relation to particular proceedings it means the chairman to whom the proceedings have been referred by the President or the Vice-President;

"claim" means a complaint under the Fair Employment and Treatment Order;

"claimant" means a complainant under the Fair Employment and Treatment Order;

"compromise agreement" means an agreement to refrain from continuing proceedings where the agreement meets the conditions in Article 100(3) of the Fair Employment and Treatment Order;

"decision" includes a default judgement except when referred to in rules 30 to 32 of Schedule 1;

"document exchange" means any document exchange for the time being approved by the Lord Chancellor;

"electronic communication" has the meaning given to it by section 15(1) of the Electronic Communications Act 2000(**12**);

"hearing" means a case management discussion under rule 16, a pre-hearing review under rule 17, a hearing under rule 22 or a review hearing under rule 29 or 32 (in each case as mentioned in Schedule 1) or a sitting of a chairman or a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawful to enable the chairman or tribunal to reach a decision on any question;

"legally represented" has the meaning set out in rule 34(5) of Schedule 1;

"misconceived" includes having no reasonable prospect of success;

"Office of the Tribunals" means the Office of the Industrial Tribunals and the Fair Employment Tribunal;

"old Regulations" means the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2004;

"order" means an order, which may be issued in relation to interim matters, which may require a person to do or not to do something;

"panel of chairmen" means the panel of chairmen of the Fair Employment Tribunal appointed in accordance with Article 82(1) of the Fair Employment and Treatment Order;

"President" means the President of the Industrial Tribunals and the Fair Employment Tribunal or the person nominated by the Lord Chancellor under Article 82(6) of the Fair Employment and Treatment Order to discharge for the time being the functions of the President;

"Register" means the Register of claims, appeals, applications for enforcement, decisions and written reasons kept in accordance with regulation 11;

(**11**) S.I. 2003/2902 (N.I. 15)
(**12**) 2000 c. 7

"the relevant authorities" means the persons mentioned in paragraph 5 of Schedule 10 to the Northern Ireland Act 1998;

"rule" means a rule of procedure contained in the Schedules;

"respondent" –

(a) in relation to a complaint to the Fair Employment Tribunal for Northern Ireland under Article 38 of the Fair Employment and Treatment Order, has the same meaning as in that Article; and

(b) in relation to proceedings before the Fair Employment Tribunal for Northern Ireland under Articles 16 and 17 of the Fair Employment and Treatment Order, means the person in relation to whom the Commission has made an application under Article 16(1) of that Order or, as the case may require, the person in relation to whom an order has been made under Article 16(3) or (8) of that Order;

"Secretary" means a person for the time being appointed to act as the Secretary of the Office of the Tribunals;

"tribunal" means any tribunal which, by virtue of regulation 4, exercises the jurisdiction of the Fair Employment Tribunal for Northern Ireland, and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President or the Vice-President;

"Vice-President" means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal or the person nominated by the Lord Chancellor under Article 82(6) of the Fair Employment and Treatment Order to discharge for the time being the functions of the Vice-President;

"writing" includes writing delivered by means of electronic communication.

(2) In these Regulations, in so far as they relate to the rules in Schedule 2, and in that Schedule –

"directions" means directions given by the Commission under Article 12, 13 or 57 of the Fair Employment and Treatment Order or substituted by the Tribunal under Article 15 of that Order;

"party" means the appellant or the Commission;

"respondent" means the Commission.

(3) In these Regulations, in so far as they relate to the rules in Schedule 3, and in that Schedule –

"application for enforcement" means an application by the Commission under Article 16(1) of the Fair Employment and Treatment Order for enforcement of an undertaking or directions;

"directions" means directions given by the Commission under Articles 12, 13 or 57 of the Fair Employment and Treatment Order or substituted by the Tribunal under Article 15 of that Order and includes –

(a) directions given by the Commission under section 12, 13, 14, 33 or 34 of the Fair Employment (Northern Ireland) Act 1989 or substituted by the Tribunal under section 15 of that Act; and

(b) directions given by the Fair Employment Agency for Northern Ireland before the commencement of section 15 of the Fair Employment (Northern Ireland) Act 1989 or substituted by the Fair Employment Appeals Board under section 14 of the Fair Employment (Northern Ireland) Act 1976 for such directions;

"party" means the Commission or the respondent;

"undertaking", except where rule 15(1)(b)(iii) of Schedule 1 is applied for the purposes of Schedule 3, means an undertaking given to –

(a) the Commission under Article 12, 13 or 57 of the Fair Employment and Treatment Order;

(b) the Commission under section 12, 13, 14, 33 or 34 of the Fair Employment (Northern Ireland) Act 1989; or

(c) the Fair Employment Agency for Northern Ireland under section 13(1) or (5) of the Fair Employment Act 1976 before the commencement of section 12 of the Fair Employment (Northern Ireland) Act 1989.

(4) In these Regulations references to Article 15, 16 or 17 of the Fair Employment and Treatment Order (appeals and legal proceedings in relation to undertakings and directions) include references to those provisions as they are applied for the purposes of Articles 57 and 58 by Article 59 of that Order.

Overriding objective

3.—(1) The overriding objective of these Regulations and the rules in Schedules 1, 2 and 3 is to enable tribunals and chairmen to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable –

(a) ensuring that the parties are on an equal footing;

(b) dealing with the case in ways which are proportionate to the complexity or importance of the issues;

(c) ensuring that it is dealt with expeditiously and fairly; and

(d) saving expense.

(3) A tribunal or chairman shall seek to give effect to the overriding objective when it or he –

(a) exercises any power given to it or him by these Regulations or the rules in Schedules 1, 2 and 3; or

(b) interprets these Regulations or any rule in Schedules 1, 2 and 3.

(4) The parties shall assist the tribunal or the chairman to further the overriding objective.

Establishment of Fair Employment Tribunal for Northern Ireland

4.—(1) There shall continue to be a Tribunal, known as the Fair Employment Tribunal for Northern Ireland, established for the purposes of exercising the jurisdiction conferred on it by or under the Fair Employment and Treatment Order.

(2) The jurisdiction of the Tribunal shall be exercised by a single tribunal or, if the President or the Vice-President so directs, by two or more tribunals.

(3) The President or the Vice-President shall determine at what time and in what place the Tribunal shall sit.

Panels of members of the Tribunal

5.—(1) The Tribunal shall consist of –

(a) the President;

(b) the Vice-President;

(c) the panel of chairmen;

(d) a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employees as it sees fit; and

(e) a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employers as it sees fit.

(2) Members of the panel of chairmen shall hold and vacate office under the terms of the instrument under which they are appointed, but may resign their office by notice in writing to the Lord Chancellor, and any such member who ceases to hold office shall be eligible for reappointment.

(3) Members of the panels constituted under paragraph (1)(d) and (e) shall hold and vacate office under the terms of the instrument under which they are appointed but may resign their office by notice in writing to the Department, and any such member who ceases to hold office shall be eligible for reappointment.

Composition of tribunals

6.—(1) For each hearing, the President or the Vice-President shall select a chairman, who shall be the President, the Vice-President or a member of the panel of chairmen, and the President or the Vice-President may select himself.

(2) In any proceedings which are to be determined by a tribunal comprising a chairman and two other members, the President or the Vice-President shall select one of those other members from the panel of persons appointed by the Department under regulation 5(1)(d) and the other from the panel of persons appointed under regulation 5(1)(e).

(3) In any proceedings which are to be determined by a tribunal whose composition is described in paragraph (2), those proceedings may, with the consent of the parties, be heard and determined in the absence of any one member other than the chairman.

(4) In any proceedings which are to be determined by a tribunal whose composition is described in paragraph (2), those proceedings may, with the consent of the parties, be heard and determined by the chairman mentioned in paragraph (1) alone (whether or not the parties have subsequently withdrawn their consent).

(5) The President or the Vice-President may at any time select from the appropriate panel another person in substitution for the chairman or other member of the tribunal previously selected to hear any proceedings before a tribunal or chairman.

(6) Subject to Article 82(6) of the Fair Employment and Treatment Order, the President or the Vice-President may direct that if he is absent or unavailable a person appointed to the panel of chairmen may exercise his functions under regulation 4(2) and (3), paragraphs (2) and (4), Articles 17 and 85 of the Fair Employment and Treatment Order and his power of selection under paragraph (1).

Practice directions

7.—(1) The President may make practice directions about the procedure of tribunals, including practice directions about the exercise by tribunals or chairmen of powers under these Regulations.

(2) The power of the President to make practice directions under paragraph (1) includes power –

(a) to vary or revoke practice directions;

(b) to make different provision for different cases, including different provision for specific types of proceedings.

(3) The President shall publish a practice direction made under paragraph (1), and any revocation or variation of it, in such manner as he considers appropriate for bringing it to the attention of the persons to whom it is addressed.

Power to prescribe

8.—(1) The Department may prescribe –

(a) one or more versions of a form, one of which shall be used by all claimants for the purpose of instituting proceedings in a tribunal ("claim form") except any claim or proceedings listed in paragraph (3);

(b) one or more versions of a form, one of which shall be used by all respondents to a claim for the purpose of responding to a claim before a tribunal ("response form") except respondents to a claim or proceedings listed in paragraph (3); and