STATUTORY RULES OF NORTHERN IRELAND

# 2005 No. 150

# EMPLOYMENT

## The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005

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| *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 Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978(**2**), Articles 3(1), 6(6)(**3**) and (6A)(**4**), 9(1), (2), (3)(**5**), (3ZA)(**6**), (3A)(**7**) and (5), 9A(1) and (2)(**8**), 11(1)(**9**), (2) and (4), 12(2), (5), (6) and (7), 12A(1)(**10**), 13(1), 14(2), 15(1), (1A), (1B), (1C)(**11**) and (2), 15A(**12**), 21(**13**) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(**14**), and now vested in it(**15**), 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 Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 and the Rules of Procedure contained in Schedules 1, 2, 3, 4, 5 and 6 to these Regulations may be referred to, respectively as –

(a) the Industrial Tribunals Rules of Procedure;

(b) the Industrial Tribunals (National Security) Rules of Procedure;

(c) the Industrial Tribunals (Equal Value) Rules of Procedure;

(d) the Industrial Tribunals (Levy Appeals) Rules of Procedure;

(**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. 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 modified by S.I. 2003/2902 (N.I. 15), Article 5
(**8**) Article 9A was inserted by S.I. 2003/2902 (N.I. 15), Article 6
(**9**) Article 11(1)(a) was amended by S.I. 2003/2902 (N.I. 15), Article 7(2)
(**10**) Article 12 was substituted and Article 12A inserted by S.I. 1999/2790 (N.I. 9), Schedule 8, paragraph 3
(**11**) 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)
(**12**) Article 15A was inserted by S.I. 2003/2902 (N.I. 15), Article 8(2)
(**13**) 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
(**14**) S.I. 1996/1921 (N.I. 18)
(**15**) *See*S.R. 1999 No. 481

(e) the Industrial Tribunals (Health and Safety – Appeals against Improvement and Prohibition Notices) Rules of Procedure; and

(f) the Industrial Tribunals (Non-Discrimination Notices Appeals) Rules of Procedure.

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

(3) Subject to the savings in regulation 15, the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004(**16**) and the Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2004(**17**) are revoked.

**Interpretation**

**2.**—(1) In these Regulations and in Schedules 1, 2, 3, 4, 5 and 6 –

"the Sex Discrimination Order" means the Sex Discrimination (Northern Ireland) Order 1976(**18**);

"the Disability Discrimination Act" means the Disability Discrimination Act 1995(**19**);

"the Industrial Tribunals Order" means the Industrial Tribunals (Northern Ireland) Order 1996(**20**);

"the Race Relations Order" means the Race Relations (Northern Ireland) Order 1997(**21**);

"the Employment Order" means the Employment (Northern Ireland) Order 2003(**22**);

"the Sexual Orientation Regulations" means the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003(**23**);

"allowances" means any allowances payable under Article 7(2)(c) or (3) of the Industrial Tribunals Order;

"chairman" means the President, the Vice-President or a member of the panel of chairmen appointed in accordance with regulation 4(1)(a), or, for the purposes of national security proceedings, a member of the panel referred to in regulation 6 selected in accordance with regulation 7(a), and in relation to particular proceedings it means the chairman to whom the proceedings have been referred by the President or the Vice-President;

"compromise agreement" means an agreement to refrain from continuing proceedings where the agreement meets the conditions in Article 245(3)(**24**) of the Employment Rights Order;

"constructive dismissal" has the meaning set out in Article 127(1)(c) of the Employment Rights Order;

"decision" includes a default judgement except when referred to in rules 34 to 36 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(**25**);

"excluded person" means, in relation to any proceedings, a person who has been excluded from all or part of the proceedings by virtue of –

(**16**) S.R. 2004 No. 165
(**17**) S.R. 2004 No. 317
(**18**) S.I. 1976/1042 (N.I. 15)
(**19**) 1995 c. 50
(**20**) S.I. 1996/1921 (N.I. 18)
(**21**) S.I. 1997/869 (N.I. 6)
(**22**) S.I. 2003/2902 (N.I. 15)
(**23**) S.R. 2003 No. 497
(**24**) Article 245(3) was amended by S.I. 1998/1265 (N.I. 8), Articles 10(2)(d), 11(2)(d) and Schedule 1, paragraph 15(1)
(**25**) 2000 c. 7

(a) a direction of the Secretary of State under rule 54(1)(b) or (c) of Schedule 1; or

(b) an order of the tribunal under rule 54(2)(a) read with 54(1)(b) or (c) of Schedule 1;

"hearing" means a case management discussion under rule 17, a pre-hearing review under rule 18, a hearing under rule 26 or a review hearing under rule 33 or 36 (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 38(5) of Schedule 1;

"misconceived" includes having no reasonable prospect of success;

"national security proceedings" means proceedings in relation to which a direction is given under rule 54(1) of Schedule 1, or an order is made under rule 54(2) of that Schedule;

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

"old Regulations" means the Industrial Tribunals (Constitution and 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 a panel referred to in regulation 4(1)(a);

"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 (Northern Ireland) Order 1998(**26**) to discharge for the time being the functions of the President;

"Register" means the Register of claims, appeals, applications, decisions and written reasons kept in accordance with regulation 13;

"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;

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

"special advocate" means a person appointed in accordance with rule 8 of Schedule 2;

"tribunal" means an industrial tribunal 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 (Northern Ireland) Order 1998 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 Schedules 1, 2 and 3, and in those Schedules –

"the Equal Pay Act" means the Equal Pay Act (Northern Ireland) 1970(**27**);

(**26**) S.I. 1998/3162 (N.I. 21)
(**27**) 1970 c. 32 (N.I.) as amended by S.R. 1984 No. 16 and S.R. 2005 No. 145

"comparator" means the person of the opposite sex to the claimant in relation to whom the claimant claims that his work is of equal value as described in section 1(2)(c) of the Equal Pay Act(**28**);

"equal value claim" means a claim by a claimant which rests upon entitlement to the benefit of an equality clause by virtue of the operation of section 1(2)(c) of the Equal Pay Act;

"the facts relating to the question" has the meaning in rule 6(3) of Schedule 3;

"independent expert" means a member of the panel of independent experts within the meaning of section 2A(4) of the Equal Pay Act(**29**);

"indicative timetable" means the indicative timetable set out in the Annex to Schedule 3;

"the question" means whether the claimant's work is of equal value to that of the comparator as described in section 1(2)(c) of the Equal Pay Act;

"report" means a report required by a tribunal or chairman to be prepared by an expert, pursuant to section 2A(1)(b) of the Equal Pay Act.

(3) In these Regulations, in so far as they relate to the rules in Schedule 4, and in that Schedule –

"the Industrial Training Order" means the Industrial Training (Northern Ireland) Order 1984(**30**);

"Board" means, in relation to an appeal, the Construction Industry Training Board(**31**);

"levy" means a levy imposed under Article 23 of the Industrial Training Order;

"levy appeal" means an appeal against an assessment to a levy;

"respondent" means the Board.

(4) In these Regulations, in so far as they relate to the rules in Schedule 5, and in that Schedule –

"the Health and Safety Order" means the Health and Safety at Work (Northern Ireland) Order 1978(**32**);

"improvement notice" means a notice under Article 23 of the Health and Safety Order;

"inspector" means a person appointed under Article 21(1) of the Health and Safety Order;

"prohibition notice" means a notice under Article 24 of the Health and Safety Order;

"respondent" means the inspector who issued the improvement notice or prohibition notice which is the subject of the appeal.

(5) In these Regulations, in so far as they relate to the rules in Schedule 6, and in that Schedule –

"the Disability Order" means the Equality (Disability, etc.) (Northern Ireland) Order 2000(**33**);

"appeal", unless the context requires otherwise, means an appeal referred to in Article 68(1)(a) of the Sex Discrimination Order, in Article 56(1)(a) of the Race Relations Order or, as the case may be, in paragraph 10(1) and (2)(a) of Schedule 1 to the Disability Order;

"non-discrimination notice" means a notice under Article 67 of the Sex Discrimination Order, under Article 55 of the Race Relations Order or, as the case may be, under Article 6 of the Disability Order;

"respondent" means the Equality Commission for Northern Ireland established under section 73 of the Northern Ireland Act 1998(**34**).

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(**28**) Section 1(2)(c) was inserted by S.R. 1984 No. 16, regulation 2(1)
(**29**) Section 2A was inserted by S.R. 1984 No. 16, regulation 3 and amended by S.R. 1996 No. 465, regulation 2 and S.R. 2005 No. 145, regulation 2
(**30**) S.I. 1984/1159 (N.I. 9)
(**31**) *See*S.R. & O. (N.I.) 1964 No. 145
(**32**) S.I. 1978/1039 (N.I. 9)
(**33**) S.I. 2000/1110 (N.I. 2)
(**34**) 1998 c. 47

### Overriding objective

**3.**—(1) The overriding objective of these Regulations and the rules in Schedules 1, 2, 3, 4, 5 and 6 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, 3, 4, 5 and 6; or

(b) interprets these Regulations or any rule in Schedules 1, 2, 3, 4, 5 and 6.

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

### Panels of members of tribunals – general

**4.**—(1) There shall be three panels of members of industrial tribunals, namely –

(a) a panel of full-time and part-time chairmen appointed by the Department consisting of persons –

(i) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(**35**);

(ii) being an advocate or solicitor admitted in Scotland of at least seven years' standing; or

(iii) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years' standing;

(b) 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

(c) 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 panels constituted under these Regulations 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.

(3) The President or the Vice-President may establish further specialist panels of chairmen and persons referred to in paragraph (1)(b) and (c) and may select persons from such specialist panels in order to deal with proceedings in which particular specialist knowledge would be beneficial.

### Composition of tribunals – general

**5.**—(1) For each hearing, the President or the Vice-President shall select a chairman, who shall, subject to regulation 7, 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, subject to regulation 7, select one of those

(**35**) 1990 c. 41