STATUTORY RULES OF NORTHERN IRELAND

2004 No. 165

EMPLOYMENT

Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004

Made - - - -	*2nd April 2004*
Coming into operation	*4th April 2004*

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**), section 62(2) of and paragraph 42(1) of Schedule 8 to the Disability Discrimination Act 1995(**3**), Articles 3(1), 6(6)(**4**) and (6A)(**5**), 9(1), (2), (3) and (5), 11(1), (2) and (4), 12(2), (5), (6) and (7), 12A(1)(**6**), 13(1), 14(2), 15(1) and (2), 21 and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(**7**), and now vested in it(**8**), and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004 and the Rules of Procedure contained in Schedules 1, 2, 3, 4, 5 and 6 may be referred to, respectively, as –

(a) the Industrial Tribunals Rules of Procedure 2004;

(b) the Industrial Tribunals (National Security) Complementary Rules of Procedure 2004;

(c) the Industrial Tribunals (Equal Value) Complementary Rules of Procedure 2004;

(d) the Industrial Tribunals (Levy Appeals) Rules of Procedure 2004;

(e) the Industrial Tribunals (Improvement and Prohibition Notices Appeals) Rules of Procedure 2004; and

(f) the Industrial Tribunals (Non-Discrimination Notices Appeals) Rules of Procedure 2004.

(**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)
(**3**) 1995 c. 50
(**4**) Article 6(6) was amended by paragraph 16(3) of Schedule 1 to the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8))
(**5**) Article 6A was inserted by Article 4(5) of S.I. 1998/1265 (N.I. 8)
(**6**) Article 12 was substituted and Article 12A inserted by paragraph 3 of Schedule 8 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9))
(**7**) S.I. 1996/1921 (N.I. 18)
(**8**) *See*S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999

(2) These Regulations shall come into operation on 4th April 2004.

Interpretation

2.—(1) In these Regulations –

"the Act of 1995" means the Disability Discrimination Act 1995(**9**);

"the Order of 1976" means the Sex Discrimination (Northern Ireland) Order 1976(**10**);

"the Employment Rights Order" means the Employment Rights (Northern Ireland) Order 1996(**11**);

"the Industrial Tribunals Order" means the Industrial Tribunals (Northern Ireland) Order 1996(**12**);

"the Order of 1997" means the Race Relations (Northern Ireland) Order 1997(**13**);

"the Regulations of 2003" means the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003(**14**);

"chairman" means the President, the Vice-President or a member of the panel of chairmen selected in accordance with regulation 8(1); or, for the purposes of proceedings in relation to which a direction is given under Article 12(3) of the Industrial Tribunals Order or an order is made under Article 12(4) of that Order, a member of the panel referred to in regulation 6(a) selected in accordance with regulation 8(5)(a);

"the clerk" means the person appointed as clerk to the tribunal by the Secretary to act in that capacity at one or more hearings;

"devolution issue" means a devolution issue within the meaning of paragraph 1 of Schedule 10 to the Northern Ireland Act 1998(**15**);

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

"hearing" means a sitting of a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the tribunal to reach a decision on any question;

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

"panel of chairmen" means the panel appointed in accordance with regulation 5(1)(a);

"the 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(**16**) to discharge the functions of the President;

"Register" means the Register of applications, appeals and decisions kept in pursuance of regulation 11;

"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;

(**9**) 1995 c. 50
(**10**) S.I. 1976/1042 (N.I. 15)
(**11**) S.I. 1996/1919 (N.I. 16)
(**12**) S.I. 1996/1921 (N.I. 18)
(**13**) S.I. 1997/869 (N.I. 6)
(**14**) S.R. 2003 No. 497
(**15**) 1998 c. 47
(**16**) S.I. 1998/3162 (N.I. 21)

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

"tribunal" means an industrial tribunal;

"the 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 the functions of the Vice-President.

(2) In these Regulations, in so far as they relate to the rules in Schedules 1, 2 and 3, and in those Schedules –

"the Act of 1970" means the Equal Pay Act (Northern Ireland) 1970(**17**);

"the Order of 1988" means the Sex Discrimination (Northern Ireland) Order 1988(**18**);

"the Order of 1992" means the Industrial Relations (Northern Ireland) Order 1992(**19**);

"Crown employment proceedings" has the meaning given by Article 12(8) of the Industrial Tribunals Order;

"decision" in relation to a tribunal includes –

(a) a declaration;

(b) an order, including an order striking out any originating application or notice of appearance made under rule 4(8)(b) or 15(2);

(c) a recommendation or an award of the tribunal; and

(d) a determination under rule 6;

but does not include any other interlocutory order or any other decision on an interlocutory matter;

"equal value claim" means a claim by an applicant which rests upon entitlement to the benefit of an equality clause by virtue of the operation of section 1(2)(c) of the Act of 1970(**20**);

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

(a) a direction of a Minister of the Crown under rule 8(1)(b) or (c), or

(b) an order of the tribunal under rule 8(2)(a) read with rule 8(1)(b) or (c);

"expert" means a member of the panel of independent experts within the meaning of section 2A(4) of the Act of 1970(**21**);

"misconceived" includes having no reasonable prospect of success;

"report" means a report required by a tribunal to be prepared by an expert, pursuant to section 2A(1)(b) of the Act of 1970;

"respondent" means a party to the proceedings before a tribunal other than the applicant;

"special advocate" means a person appointed pursuant to rule 7A(1).

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

"the Order of 1984" means the Industrial Training (Northern Ireland) Order 1984(**22**);

"appellant" means a person who sends a notice of appeal to the Board;

(**17**) 1970 c. 32 (N.I.) as amended by S.R. 1984 No. 16
(**18**) S.I. 1988/1303 (N.I. 13)
(**19**) S.I. 1992/807 (N.I. 5)
(**20**) Section 1(2)(c) was inserted by S.R. 1984 No. 16
(**21**) Section 2A was inserted by S.R. 1984 No. 16
(**22**) S.I. 1984/1159 (N.I. 9)

"the Board" means, in relation to an appeal, the Construction Industry Training Board(**23**);

"decision" includes any order which is not an interlocutory order;

"levy" means a levy imposed under the Order of 1984(**24**).

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

"the Order of 1978" means the Health and Safety at Work (Northern Ireland) Order 1978(**25**);

"decision" in relation to a tribunal includes a direction under rule 4(1) and any order which is not an interlocutory order;

"improvement notice" means a notice under Article 23 of the Order of 1978;

"inspector" means a person appointed under Article 21(1) of the Order of 1978;

"prohibition notice" means a notice under Article 24 of the Order of 1978;

"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 Order of 2000" means the Equality (Disability, etc.) (Northern Ireland) Order 2000(**26**);

"decision" in relation to a tribunal includes a direction under Article 68(3) of the Order of 1976, under Article 56(3) of the Order of 1997 or under paragraph 10(4) of Schedule 1 to the Order of 2000, as the case may be, and any other order which is not an interlocutory order;

"non-discrimination notice" means a notice under Article 67 of the Order of 1976, Article 56 of the Order of 1997 or paragraph 10 of Schedule 1 to the Order of 2000;

"respondent" means the Equality Commission established under section 73 of the Northern Ireland Act 1998(**27**).

(6) Any period of time for doing any act required or permitted to be done under any of the rules in Schedules 1, 2, 3, 4, 5 and 6 or under any decision, direction, declaration, order, recommendation, award or determination of a tribunal or a chairman, shall be calculated in accordance with paragraphs (7) to (10).

(7) Where any act must or may be done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. For example, a respondent receives a copy of an originating application on 1st October. He must present a written notice of appearance to the Secretary within 21 days of receiving the copy. The last day for presentation of the notice is 22nd October.

(8) Where any act must or may be done not less than a certain number of days before or after an event, the date of that event shall not be included in the calculation. For example, if a party wishes to submit representations in writing for consideration by a tribunal at the hearing of the originating application, he must submit them not less than 7 days before the hearing. If the hearing is fixed for 8th October, the representations must be submitted no later than 1st October.

(9) Where the tribunal or a chairman gives any decision, direction, declaration, order, recommendation, award or determination which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(10) In rule 5(2) of Schedule 1, rule 8 of Schedule 4, rule 6(1) of Schedule 5 and rule 4(1) of Schedule 6, the requirement to send the notice of hearing to the parties not less than 14 days before the date fixed for the hearing shall not be construed as a requirement for service of the notice to have

(**23**) *See*S.R. & O. (N.I.) 1964 No. 145
(**24**) Article 23 makes provision for levy proposals and orders
(**25**) S.I. 1978/1039 (N.I. 9)
(**26**) S.I. 2000/1110 (N.I. 2)
(**27**) 1998 c. 47

been effected not less than 14 days before the hearing date, but as a requirement for the notice to have been placed in the post not less than 14 days before that date. For example, a hearing is fixed for 15th October. The last day on which the notice may be placed in the post is 1st October.

Establishment of industrial tribunals

3.—(1) There shall continue to be tribunals established for the purposes of exercising the jurisdiction conferred on them by or under the Order of 1984 or any other statutory provision.

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

President and Vice-President of industrial tribunals

4.—(1) There shall be a President and a Vice-President of the Industrial Tribunals and the Fair Employment Tribunal who shall each be appointed by the Lord Chancellor and shall be persons –

(a) having a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(**28**);

(b) being an advocate or solicitor admitted in Scotland of at least 7 years' standing; or

(c) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing.

(2) The President or the Vice-President may each resign his office by notice in writing to the Lord Chancellor.

(3) The President and the Vice-President shall each vacate his office at the end of the completed year of service in the course of which he attains the age of 72 years.

(4) If the Lord Chancellor is satisfied that the President or the Vice-President is incapacitated by infirmity of mind or body from discharging the duties of his office, or the President or the Vice-President is adjudged to be bankrupt or makes a composition or arrangement with his creditors, the Lord Chancellor may revoke his appointment.

(5) The functions of President and Vice-President under these Regulations may, if either is for any reason unable to act or during any vacancy in his office, be discharged by a person nominated for that purpose by the Lord Chancellor.

Panels of chairmen and members of industrial tribunals

5.—(1) There shall be a panel of chairmen and two panels of members of the industrial tribunals, namely –

(a) a panel of persons to act as chairmen appointed by the Department consisting of persons –

(i) having a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;

(ii) being an advocate or solicitor admitted in Scotland of at least 7 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 7 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.

(**28**) 1990 c. 41