STATUTORY RULES OF NORTHERN IRELAND

2004 No. 164

FAIR EMPLOYMENT

Fair Employment Tribunal (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 Articles 81(1) and (2), 82(5) and (7), 84(1), (2), (3), (4) and (5) and 84B(1) and (2)(**2**) of the Fair Employment and Treatment (Northern Ireland) Order 1998(**3**), and now vested in it(**4**), and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2004 and shall come into operation on 4th April 2004.

Interpretation

2.—(1) In these Regulations –

"the Order of 1992" means the Industrial Relations (Northern Ireland) Order 1992(**5**);

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

"appellant" means a person who has appealed to the Fair Employment Tribunal for Northern Ireland under Article 15, 62(7) or 63(5) of the Order of 1998;

"applicant" means a person who has presented a complaint to the Fair Employment Tribunal for Northern Ireland by way of an originating application presented to the Secretary under rule 1 of Schedule 1;

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

"decision" in relation to a tribunal includes –

(**1**) Formerly known as the Department of Higher and Further Education, Training and Employment; renamed the Department for Employment and Learning by the Department for Employment and Learning Act (Northern Ireland) 2001 c. 15 (N.I.)
(**2**) Article 84B was inserted by S.I. 2003/2902 (N.I. 15), Article 13
(**3**) S.I. 1998/3162 (N.I. 21)
(**4**) *See*S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999
(**5**) S.I. 1992/807 (N.I. 5)

(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 13(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;

"devolution issue" means a devolution issue within the meaning of paragraph 1 of Schedule 10 to the Northern Ireland Act 1998(**6**);

"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 a tribunal to reach a decision on any question;

"misconceived" includes having no reasonable prospect of success;

"notice of refusal" means a notice served by the Commission under Article 62(7) or 63(5) of the Order of 1998;

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

"panel of chairmen" means the panel of chairmen of the Fair Employment Tribunal appointed in accordance with Article 82(1) of the Order of 1998;

"the President" means the President of the Industrial Tribunals and the Fair Employment Tribunal or a person nominated by the Lord Chancellor under Article 82(6) of the Order of 1998 to discharge the functions of the President;

"Register" means the Register of applications, appeals and decisions kept in pursuance of regulation 7;

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

"respondent" –

(a) in relation to a complaint to the Fair Employment Tribunal for Northern Ireland under Article 38 of the Order of 1998, 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 Order of 1998, 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;

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

"the Secretary" means the person for the time being acting as the Secretary of the Office of the Tribunals;

"tribunal" means any tribunal which, by virtue of regulation 3(2) and (3), exercises the jurisdiction of the Fair Employment Tribunal for Northern Ireland;

"Vice-President" means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal or a person nominated by the Lord Chancellor under Article 82(6) of the Order of 1998 to discharge the functions of the Vice-President;

(**6**) 1998 c. 47

(2) In Schedule 2 –

"directions", except in rule 11, means directions given by the Commission under Article 12, 13 or 57 of the Order of 1998 or substituted by the Tribunal under Article 15 of that Order;

"party" means the appellant or the Commission.

(3) In Schedule 3 –

"application for enforcement" means an application by the Commission under Article 16(1) of the Order of 1998 for enforcement of an undertaking or directions;

"directions", except in rule 11, means directions given by the Commission under Articles 12, 13 or 57 of the Order of 1998 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 in rule 6(3)(b)(iii), means an undertaking given to –

(a) the Commission under Article 12, 13 or 57 of the Order of 1998;

(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 Order of 1998 include references to those provisions as they are applied for the purposes of Articles 57 and 58 by Article 59 of that Order.

(5) 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.

(6) 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.

(7) 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.

(8) In rule 5(2) of Schedule 1, rule 4(1) of Schedule 2 and rule 5(1) of Schedule 3, 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 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 Fair Employment Tribunal for Northern Ireland

3.—(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 Order of 1998.

(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.

Composition of the Tribunal

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

(a) the President;

(b) the Vice-President;

(c) the panel of chairmen;

(d) a panel of up to 50 members 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 up to 50 members appointed by the Department after consultation with such organisations or associations of organisations representative of employers as it sees fit.

(2) Subject to rule 13(7) of Schedule 1, rule 10(5) of Schedule 2 and rule 10(5) of Schedule 3, the Tribunal shall consist of a chairman and two other members, but in the absence of any one member other than the chairman a hearing may, with the consent of the parties, take place in the absence of such member and in that event the Tribunal shall be deemed to be properly constituted.

(3) For each hearing of any matter before a tribunal the President or 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.

(4) For each hearing the two members of the tribunal other than the chairman shall be selected by the President or the Vice-President as to –

(a) one member from the panel selected in accordance with paragraph (1)(d); and

(b) the other from the panel selected in accordance with paragraph (1)(e).

(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 a tribunal previously selected.

(6) 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 office by notice in writing to the Lord Chancellor.

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

(8) Subject to Article 82(6) of the Order of 1998 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 3(2) and (3), paragraphs (4) and (5), Articles 17 and 85 of the Order of 1998 and his power of selection under paragraph (3).

Proceedings of the Tribunal

5. The Rules of Procedure set out in –

(a) Schedule 1 shall apply in relation to all proceedings before a tribunal except where separate rules of procedure made under the provision of any statutory provision are applicable and where –

(i) the respondent or one of the respondents resides or carries on business in Northern Ireland;

(ii) had the remedy been by way of action in the county court, the cause of action would have arisen wholly or partly in Northern Ireland; or

(iii) the proceedings are to determine a question which has been referred to the tribunal by a court in Northern Ireland;

(b) Schedule 2 shall apply in relation to appeals to a tribunal under Article 15, 62(7) or 63(5) of the Order of 1998;

(c) Schedule 3 shall apply in relation to proceedings before a tribunal under Articles 16 and 17 of the Order of 1998.

Overriding objective

6.—(1) The overriding objective of the rules in Schedules 1, 2 and 3 is to enable the Tribunal 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) saving expense;

(c) dealing with the case in ways which are proportionate to the complexity of the issues; and

(d) ensuring that it is dealt with expeditiously and fairly.

(3) The Tribunal shall seek to give effect to the overriding objective when it –

(a) exercises any power given to it by the rules; or

(b) interprets any rule.

(4) The parties shall assist the Tribunal to further the overriding objective.

Register

7.—(1) The Secretary shall maintain a Register at the Office of the Tribunals which shall be open to the inspection of any person without charge at all reasonable hours.

(2) The Register shall contain –

(a) details of originating applications in accordance with rule 2 of Schedule 1;

(b) details of appeals in accordance with rule 2 of Schedule 2;

(c) details of applications for enforcement in accordance with rule 2 of Schedule 3;

(d) documents recording the decisions of the Tribunal and the reasons therefor.

(3) The register, or any part of it, may be kept by means of a computer.

Proof of decision of the Tribunal

8. The production in any proceedings in any court of a document purporting to be certified by the Secretary to be a true copy of an entry of a decision in the Register shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.