# 1989 No. 445

# FAIR EMPLOYMENT

## Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 1989

*Made* . . . . . *23rd November 1989*

*Coming into operation* . . *1st January 1990*

The Department of Economic Development(**a**), in exercise of the powers conferred on it by sections 2(1) and (2) and 5(1), (2), (4), (5) and (6) of the Fair Employment (Northern Ireland) Act 1989(**b**) 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) 1989 and shall come into operation on 1st January 1990.

*Interpretation*

**2.**—(1) The Interpretation Act (Northern Ireland) 1954(**c**), except section 24 (Service of documents), shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

"the Act of 1976" means the Fair Employment (Northern Ireland) Act 1976(**d**);

"the Order of 1976" means the Industrial Relations (Northern Ireland) Order 1976(**e**);

"the Act of 1989" means the Fair Employment (Northern Ireland) Act 1989;

"the Agency" means the Labour Relations Agency established under Article 4 of the Order of 1976;

"appellant" means a person who has appealed to the Fair Employment Tribunal for Northern Ireland under section 15, 38(7) or 39(5) of the Act of 1989;

"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;

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(**a**) Formerly the Department of Manpower Services for Northern Ireland: *see* S.I. 1982/846 (N.I. 11) Article 3

(**b**) 1989 c. 32

(**c**) 1954 c. 33 (N.I.)

(**d**) 1976 c. 25

(**e**) S.I. 1976/1043 (N.I. 16)

"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 an order (other than an interlocutory order), a recommendation, or an award of the tribunal but does not include an opinion given pursuant to a pre-hearing assessment held under rule 6 of Schedule 1;

"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;

"notice of refusal" means a notice served by the Commission under section 38(7) or 39(5) of the Act of 1989;

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

"panel of chairmen" means the panel of chairmen of the Fair Employment Tribunal appointed in accordance with section 3(1)(c) of the Act of 1989;

"the President" means the President of the Industrial Tribunals and the Fair Employment Tribunal or a person nominated by the Lord Chancellor under section 3(6) of the Act of 1989 to discharge the functions of the President;

"Register" means the Register of applications, appeals and decisions kept in pursuance of these Regulations;

"respondent"—

(*a*) in relation to a complaint to the Fair Employment Tribunal for Northern Ireland under section 24(**a**) of the Act of 1976, has the same meaning as in that Act; and

(*b*) in relation to proceedings before the Fair Employment Tribunal for Northern Ireland under sections 16 and 17 of the Act of 1989, means the person in relation to whom the Commission has made an application under section 16(1) of that Act or, as the case may require, the person in relation to whom an order has been made under section 16(3) or (7) of that Act;

"rule" means, in a particular Schedule, a rule of procedure contained in that Schedule;

"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(3) of the Fair Employment Tribunal Regulations (Northern Ireland) 1989(**b**), 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 section 3(6) of the Act of 1989 to discharge the functions of the Vice-President.

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(**a**) As substituted by section 50(1) of the Act of 1989
(**b**) S.R. 1989 No. 444

(3) In these Regulations references to section 15, 16 or 17 of the Act of 1989 include references to those provisions as they are applied for the purposes of sections 33 and 34 of the Act of 1989 by section 35 thereof.

(4) In these Regulations expressions which are also used in the Fair Employment (Northern Ireland) Acts shall, unless the contrary intention appears, have the same meaning as in those Acts.

*Proceedings of the Fair Employment Tribunal for Northern Ireland*

**3.** The Rules of Procedure set out in—

(*a*) Schedule 1 shall have effect in relation to complaints to the Fair Employment Tribunal for Northern Ireland under section 24(**a**) of the Act of 1976;

(*b*) Schedule 2 shall have effect in relation to appeals to the Fair Employment Tribunal for Northern Ireland under section 15, 38(7) or 39(5) of the Act of 1989;

(*c*) Schedule 3 shall have effect in relation to proceedings before the Fair Employment Tribunal for Northern Ireland under sections 16 and 17 of the Act of 1989.

*Proof of decision of the Fair Employment Tribunal for Northern Ireland*

**4.** 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.

Sealed with the Official Seal of the Department of Economic Development on 23rd November 1989.

(L.S.) *D. C. Gowdy*
Under Secretary

(**a**) As substituted by section 50(1) of the Act of 1989

## RULES OF PROCEDURE: COMPLAINTS

*Originating application*

1. Proceedings for the determination of any matter by the Fair Employment Tribunal for Northern Ireland shall be instituted by the applicant presenting to the Secretary an originating application which shall be in writing and shall set out—

(*a*) the name and address of the applicant;

(*b*) the names and addresses of the person or persons against whom relief is sought; and

(*c*) the grounds, with particulars thereof, on which that relief is sought.

*Action upon receipt of originating application*

2. Upon receiving an originating application the Secretary shall enter particulars of it in the Register and shall forthwith send a copy of it to the respondent and inform the parties in writing of the case number of the originating application entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent. Every copy of the originating application sent by the Secretary under this paragraph shall be accompanied by a written notice which shall include information, as appropriate to the case, about the means and time for entering an appearance, the consequences of failure to do so, and the right to receive a copy of the decision. The Secretary shall notify the parties that the conciliation services of the Agency are available to them.

*Appearance by respondent*

3.—(1) A respondent shall within 14 days of receiving the copy originating application enter an appearance to the proceedings by presenting to the Secretary a written notice of appearance setting out his full name and address and stating whether or not he intends to resist the application and, if so, setting out sufficient particulars to show on what grounds. Upon receipt of a notice of appearance the Secretary shall forthwith send a copy of it to any other party.

(2) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except—

(*a*) to apply under rule 13(1) for an extension of the time appointed by this rule for entering an appearance;

(*b*) to make an application under rule 4(1)(*a*);

(*c*) to make an application under rule 10(2) in respect of rule 10(1)(*b*);

(*d*) to be called as a witness by another person; or

(*e*) to be sent a copy of a decision or specification of reasons or corrected decision or specification in pursuance of rule 9(3), 9(4), 9(7) or 10(5).

(3) A notice of appearance which is presented to the Secretary after the time appointed by this rule for entering appearances shall be deemed to include an application under rule 13(1) (by the respondent who has presented the notice of appearance) for an extension of the time so appointed. Without prejudice to rule 13(4), if a tribunal grants the application (which it may do notwithstanding that the grounds of the application are not stated) the Secretary shall forthwith send a copy of the notice of appearance to any other party. A tribunal shall not refuse an extension of time under this rule unless it has sent notice to the person wishing to enter an appearance giving him an opportunity to show cause why the extension should be granted.

*Power to require further particulars and attendance of witnesses and to grant discovery*

4.—(1) Subject to rule 3(2) and paragraph (2), a tribunal may on the application of a party to the proceedings made either by notice to the Secretary or at the hearing of the originating application—

(*a*) require a party to furnish in writing to the person specified by the tribunal further particulars of the grounds on which he or it relies and of any facts and contentions relevant thereto;

(*b*) grant to the person making the application such discovery or inspection (including the taking of copies) of documents as might be granted by a county court; and

(*c*) require the attendance of any person (including a party to the proceedings) as a witness, wherever such person may be within Northern Ireland, and may, if it does so require the attendance of a person, require him to produce any document relating to the matter to be determined;

and may appoint the time at or within which or the place at which any act required in pursuance of this rule is to be done.

(2) A tribunal may, if it thinks fit of its own motion, exercise the powers set out in paragraph (1)(*a*).

(3) A party on whom a requirement has been made under paragraph (1)(*a*) or (*b*) on an *ex parte* application, or (in relation to a requirement under paragraph (1)(*a*)) on a tribunal's own motion and a person on whom a requirement has been made under paragraph (1)(*c*) may apply to the Fair Employment Tribunal for Northern Ireland by notice to the Secretary before the appointed time at or within which the requirement is to be complied with to vary or set aside the requirement. Notice of an application under this paragraph to vary or set aside a requirement shall be given to the parties (other than the party making the application).

(4) Every document containing a requirement under paragraph (1)(*b*) or (*c*) shall contain a reference to the fact that under section 5(8) and (9) of the Act of 1989 any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine and if without reasonable excuse the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine for each day on which the failure continues and the document shall state the amounts of the current maximum fines:

(5) If the requirement under paragraph (1)(*a*) or (*b*) is not complied with, a tribunal, before or at the hearing, may dismiss the whole or part of the originating application, or, as the case may be, strike out the whole or part of the notice of appearance, and, where appropriate, direct that a respondent shall be debarred from defending altogether: Provided that the tribunal shall not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why such should not be done.

*Time and place of hearing*

5. The President or Vice-President shall fix the date, time and place of any hearing and the Secretary shall (subject to rule 3(2)) not less than 14 days (or such shorter time as may be agreed by him with the parties) before the date so fixed send to each party a notice of hearing which shall include information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.