

SCHEDULE 5

Regulations 2(5), 6(6) and 9(1)

Industrial Tribunals (Non-Discrimination Notices Appeals) Rules of Procedure 1996
For use in proceedings on an appeal against a non-discrimination notice

Notice of appeal and time limit

1. An appeal against a non-discrimination notice shall be commenced by the appellant sending to the Secretary a notice of appeal which shall be in writing and shall set out—
 - (a) the name and address of the appellant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the appeal to be sent;
 - (b) the date of the non-discrimination notice appealed against;
 - (c) the name and address of the Commission;
 - (d) particulars of the requirements appealed against; and
 - (e) the grounds of appeal.

Action upon receipt of notice of appeal

2. Upon receiving a notice of appeal the Secretary shall—
 - (a) subject to rule 10(4), enter particulars of it in the Register;
 - (b) send a copy of it to the Commission; and
 - (c) give every party notice of the case number of the appeal 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.

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

- 3.—(1) A tribunal may, on the application of a party made either by notice to the Secretary or at the hearing of the appeal, or of its own motion, make an order, as may be granted by a county court, to—
 - (a) require a party to furnish in writing to the person specified by the tribunal further particulars of the grounds on which that party relies and of any facts and contentions relevant thereto;
 - (b) require one party to grant to another discovery or inspection (including the taking of copies) of documents,

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

Provided that the tribunal shall not under this rule require the production of any document certified by the Secretary of State as being a document of which the production would be against the interests of national security.

- (2) A tribunal may, on the application of a party made either by notice to the Secretary or at the hearing, or of its own motion, make an order—
 - (a) to require the attendance of any person, including a party, as a witness, wherever such person may be within Northern Ireland; and
 - (b) if it does so require the attendance of a person, to require him to produce any document in his possession or power relating to the matter to be determined,

and may appoint the time and place at which the person is to attend and, where appropriate, the time at or within which and the place at which any such document is to be produced.

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(3) A tribunal may, on the application of a party made by notice to the Secretary or of its own motion, impose a requirement on a party to furnish to the tribunal a written answer to any question if it considers—

- (a) that the answer of the party to that question may help to clarify any issue likely to arise for determination in the proceedings; and
- (b) that it would be likely to assist the progress of the proceedings for that answer to be available to the tribunal before the hearing, and may appoint the time within which the written answer is to be furnished. Where a requirement is imposed under this paragraph, the Secretary shall send to each other party a copy of such requirement and a copy of the written answer furnished to the tribunal.

(4) The tribunal shall take account of a written answer furnished pursuant to paragraph (3) in the same way as it takes account of representations in writing submitted by a party pursuant to rule 5(4).

(5) Where a requirement has been imposed under paragraph (1), (2) or (3)—

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may make an application to the tribunal to vary or set aside the requirement by notice to the Secretary given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with; and the Secretary shall give notice of the application to each party or, where applicable, to each other party.

(6) Every document containing a requirement imposed under paragraph (1)(b) or (2) shall contain a reference to the fact that, under Article 59(11) of the No. 1 Order, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine and the document shall state the amount of the current maximum fine.

(7) If a requirement imposed under paragraph (1) or (3) is not complied with, a tribunal, before or at the hearing, may strike out the whole or part of the notice of appeal, and, where appropriate, direct that a respondent shall be debarred from defending altogether; but a tribunal shall not so strike out or direct unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so.

Time and place of hearing

4.—(1) The President or Vice-President shall fix the date, time and place of the hearing of the appeal and the Secretary shall 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 together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representations by another person and the making of written representations.

(2) The Secretary shall also send notice of the hearing to such persons as the President or Vice-President may direct, but the requirement as to the period of 14 days referred to in paragraph (1) shall not apply to any such notice.

The hearing

5.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with Article 58A(1), (2), (3) or (7) of the No. 1 Order⁽¹⁾.

(2) Any hearing of or in connection with an appeal shall take place in public except where the Secretary of State has directed a tribunal to sit in private on grounds of national security, in accordance with Article 59(4A)⁽²⁾ of the No. 1 Order.

(1) As inserted by S.I. 1993/2668 (N.I. 11) Article 14

(2) As inserted by S.I. 1993/2668 (N.I. 11) Schedule 5 paragraph 1

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(3) Notwithstanding paragraph (2), a tribunal may sit in private, if on the application of a party the tribunal considers it appropriate to do so, for the purpose of hearing evidence—

- (a) which in the opinion of the tribunal relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public; or
- (b) from any person which in the opinion of the tribunal is likely to consist of—
 - (i) information which he could not disclose without contravening a prohibition imposed by or under any statutory provision; or
 - (ii) any information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
 - (iii) information the disclosure of which would cause substantial injury to any undertaking of his or any undertaking in which he works for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 3(1) of the No. 1 Order.

(4) If a party wishes to submit written representations for consideration by a tribunal at the hearing of the appeal, that party shall send such representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy to the other party.

Procedure at hearing

6.—(1) The tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall not be bound by any statutory provisions or rule of law relating to the admissibility of evidence in proceedings before the courts of law. The tribunal shall make such enquiries of persons appearing before it and witnesses as it considers appropriate and shall otherwise conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Subject to paragraph (1), at the hearing of or in connection with an appeal a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.

(3) If a party shall fail to appear or to be represented at the time and place fixed for the hearing of an appeal, the tribunal may if that party is an appellant dismiss, or in any case, dispose of the appeal in the absence of that party or may adjourn the hearing to a later date: provided that before disposing of an appeal in the absence of a party the tribunal shall consider any written representations submitted by that party in pursuance of rule 5(4).

(4) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Decision of tribunal

7.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal which may be given orally at the end of a hearing or reserved shall be recorded in a document signed by the chairman which shall specify the reasons for the decision.

(3) The clerk shall send the document referred to in paragraph (2) to the Secretary who shall enter it in the Register and shall send a copy of the entry to each of the parties.

(4) The specification of the reasons for the decision shall be omitted from the Register in any case in which—

- (a) the Secretary of State has directed the tribunal, in accordance with Article 59(4A) of the No. 1 Order, to sit in private on grounds of national security; or

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(b) evidence has been heard in private and the tribunal so directs, and in that event a specification of the reasons shall be sent to the parties and to any superior court in any proceedings relating to such decision together with the copy of the entry in the Register of the document referred to in paragraph (2).

(5) In any appeal appearing to involve allegations of a sexual offence, the document referred to in paragraph (2) shall be entered on the Register with such omissions or deletions as have been made in accordance with rule 10(4).

(6) Clerical mistakes in the document referred to in paragraph (2) or errors arising therein from any accidental slip or omission may at any time be corrected by the chairman by certificate under his hand.

(7) If a document is corrected by certificate under paragraph (6) or if a decision is—

- (a) revoked or varied under the chairman's hand under rule 8; or
- (b) altered in any way by order of a superior court,

the Secretary shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of any entry so altered to each of the parties.

(8) Where a document omitted from the Register pursuant to paragraph (4) is corrected by certificate under paragraph (6), the Secretary shall send a copy of the corrected document to each of the parties; and where there are proceedings before any superior court relating to the decision in question, he shall send a copy to that court together with a copy of the entry in the Register of the document referred to in paragraph (2), if it has been altered under paragraph (7).

(9) Where this rule requires a document to be signed by the chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other members or member of the tribunal, who shall certify that the chairman is unable to sign.

Review of tribunal's decision

8.—(1) Subject to the provisions of this rule a tribunal may on the application of a party or of its own motion review any decision on the grounds that—

- (a) the decision was wrongly made as a result of an error on the part of the tribunal staff;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (d) new evidence has become available since the making of the decision provided that its existence could not have been reasonably known of or foreseen; or
- (e) the interests of justice require such a review.

(2) A tribunal may not review a decision of its own motion unless it is the tribunal which made the decision.

(3) A tribunal may only review a decision of its own motion if—

- (a) it exercises the power within the period beginning with the date of the hearing and ending with the fourteenth day after the date on which the decision was sent to the parties; and
- (b) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review.

(4) An application for the purposes of paragraph (1) may be made at the hearing. If the application is not made at the hearing, such application shall be made to the Secretary at any time from the date of the hearing until 14 days after the date on which the decision was sent to the parties and must be in writing stating the grounds in full.

(5) An application for the purposes of paragraph (1) may be refused by the President or Vice-President or the chairman of the tribunal which decided the case, if in his opinion it has no reasonable prospect of success.

(6) If such an application is not refused under paragraph (5), it shall be heard by the tribunal which decided the case, or—

- (a) where it is not practicable for it to be heard by that tribunal; or
- (b) where the decision was made by a chairman acting alone under rule 10(5),

by a tribunal appointed by either the President or Vice-President.

(7) On reviewing its decision a tribunal may confirm the decision, or vary or revoke the decision under the chairman's hand; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

Costs

9.—(1) Where, in the opinion of the tribunal, an appellant has in bringing or conducting the proceedings acted scandalously, frivolously, vexatiously, abusively, disruptively or otherwise unreasonably, the tribunal may make—

- (a) an order containing an award against that appellant in respect of the costs incurred by another party;
- (b) an order that the appellant shall pay to the Department the whole, or any part, of any allowances (other than allowances paid to members of tribunals) paid by the Department under Article 30(3) of the Order of 1984 to any person for the purposes of, or in connection with, his attendance at the tribunal.

(2) An order containing an award against a party (“the first party”) in respect of the costs incurred by another party (“the second party”) shall be—

- (a) where the tribunal thinks fit, an order that the first party pay to the second party a specified sum not exceeding £500;
- (b) where those parties agree on a sum to be paid by the first party to the second party in respect of those costs, an order that the first party pay to the second party a specified sum, being the sum so agreed; or
- (c) in any other case, an order that the first party pay to the second party the whole or a specified part of the costs incurred by the second party as taxed (if not otherwise agreed).

(3) Where the tribunal has on the application of a party postponed the day or time fixed for or adjourned the hearing, the tribunal may make orders, of the kinds mentioned in paragraphs (1)(a) and (1)(b), against or, as the case may require, in favour of that party as respects any costs incurred or any allowances paid as a result of the postponement or adjournment.

(4) Any costs required by an order under this rule to be taxed may be taxed in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as shall be directed by the order.

Miscellaneous powers

10.—(1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure.

(2) A tribunal may—

- (a) postpone the day or time fixed for, or adjourn, any hearing;
- (b) before granting an application under rule 3(1) or rule 8(1) require the party making the application to give notice thereof to the other party;

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- (c) either on the application of any person or of its own motion, direct any other person to be joined as a party to the appeal (giving such consequential directions as it considers necessary), but may do so only after having given to the person proposed to be joined a reasonable opportunity of making written or oral objection;
- (d) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;
- (e) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;
- (f) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;
- (g) subject to paragraph (3), at any stage of the proceedings, order to be struck out or amended any notice of appeal, or anything in such notice of appeal, on the grounds that it is scandalous, frivolous or vexatious;
- (h) subject to paragraph (3), at any stage of the proceedings, order to be struck out any notice of appeal on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant has been scandalous, frivolous or vexatious; and
- (i) subject to paragraph (3), on the application of the respondent, or of its own motion, order a notice of appeal to be struck out for want of prosecution.

(3) Before making an order under sub-paragraph (g), (h) or (i) of paragraph (2) the tribunal shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made; but this paragraph shall not be taken to require the tribunal to send such notice to that party if the party has been given an opportunity to show cause orally why the order should not be made.

(4) In any appeal appearing to involve allegations of the commission of a sexual offence, the tribunal or the Secretary shall omit from the Register, or delete from the Register or any decision, document or record of the proceedings which is available to the public, any identifying matter.

(5) Any act required or authorised by these Rules to be done by a tribunal may be done by the President, Vice-President or a chairman except—

- (a) the hearing of an appeal under rule 5;
- (b) an act required or authorised to be done by rule 6 or 7 which the rule implies is to be done by the tribunal which is hearing or has heard the appeal;
- (c) the review of a decision under rule 8(1), and the confirmation, variation or revocation of a decision, and ordering of a re-hearing, under rule 8(7).

(6) Rule 9 shall apply to an order under paragraph (2)(e) dismissing an appeal or to an order under paragraph (2)(g), (h) or (i).

Restricted reporting orders

11.—(1) In any appeal which involves allegations of sexual misconduct the tribunal may at any time before promulgation of its decision, either on the application of a party made by notice to the Secretary or of its own motion, make a restricted reporting order.

(2) The tribunal shall not make a restricted reporting order unless it has given each party an opportunity to advance oral argument at a hearing.

(3) Where a tribunal makes a restricted reporting order—

- (a) it shall specify in the order the persons who may not be identified;
- (b) the order shall remain in force until the promulgation of the decision of the tribunal on the appeal to which it relates unless revoked earlier; and

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- (c) the Secretary shall ensure that a notice of that fact is displayed on the notice board of the tribunal with any list of the proceedings taking place before the tribunal, and on the door of the room in which the proceedings affected by the order are taking place.
- (4) A tribunal may revoke a restricted reporting order at any time if it thinks fit.
- (5) For the purposes of this rule “promulgation” occurs on the date recorded as being the date on which the document recording the determination of the appeal was sent to the parties.

Notices, etc.

12.—(1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraphs (5) and (6)) or through a document exchange in accordance with paragraph (4) or delivered to or at—

- (a) in the case of a notice or document directed to the Secretary, the Office of the Tribunals or such other office as may be notified by the Secretary to the parties;
- (b) in the case of a notice or document directed to a party—
 - (i) the address specified in the notice of appeal or in a notice under paragraph (3) to which notices and documents are to be sent; or
 - (ii) if no such address is specified or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom, or if the party is a corporate body, the body’s registered or principal office in the United Kingdom, or in any case such address or place outside the United Kingdom as the President or Vice-President may allow;
- (c) in the case of a notice or document directed to any person (other than a person specified in sub-paragraph (a) or (b)), his address or place of business in the United Kingdom, or, if such a person is a corporate body, the body’s registered or principal office in the United Kingdom,

and a notice or document sent or given to the representative of a party authorised in that behalf shall be deemed to have been sent or given to that party.

(3) A party may at any time by notice to the Secretary and to the other party change the address to which notices or documents are to be sent.

(4) Where—

- (a) the proper address for service of any notice or document required or authorised by these Rules to be sent or given to any person includes a numbered box at a document exchange; or
- (b) there is inscribed on the writing paper of the party on whom the notice or document is to be served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the notice or document that he is unwilling to accept service through a document exchange, service of the notice or document may be effected by leaving it addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any notice or document which is left at a document exchange in accordance with this paragraph shall unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(5) Where a notice of appeal is not delivered, it shall be sent by the recorded delivery service.

(6) In any case he considers appropriate the President or Vice-President may direct that there shall be substituted service in such manner as he may deem fit.

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(7) In this rule “document exchange” means any document exchange for the time being approved by the Lord Chancellor.