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STATUTORY RULES OF NORTHERN IRELAND

1996 No. 466

HEALTH AND SAFETY
INDUSTRIAL RELATIONS

Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 1996

Made - - - - 3rd October 1996
Coming into operation in accordance with regulation 1(1) and (2)

The Department of Economic Development, in exercise of the powers conferred on it by Articles 3(1), 6(1), (5), (6) and (7), 9(1), (2), (3) and (5), 11(1), (2) and (4), 12(2), 13(1) and (4), 14(2) and (5), 15(1) and (2), 21 and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(**1**) and Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978(**2**), and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 1996 and subject to paragraph (2) shall come into operation on 3rd November 1996.

(2) Regulations 9 and 11 shall come into operation on 2nd December 1996.

(3) In these Regulations "the Principal Regulations" means the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 1996(**3**) and any reference to a rule in a Schedule is a reference to a rule in that Schedule to the Principal Regulations.

Amendments of regulations

2. In Regulation 5 of the Principal Regulations, for paragraph (1) there shall be substituted—

> "(1) Subject to paragraph (5), for each hearing of any matter before a tribunal the chairman shall be the President or Vice-President or a person selected by the President or Vice-President from the panel of chairmen".

3.—(1) For Regulation 7 of the Principal Regulations there shall be substituted—

(**1**) S.I. 1996/1921 (N.I. 18)
(**2**) S.I. 1978/1039 (N.I. 9)
(**3**) S.R. 1996 No. 173

"**7.**—(1) The Secretary shall maintain a Register of applications, appeals and decisions 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, or any part of it, may be kept by means of a computer."

Amendments of rules in Schedule 1

4. The Rules in Schedule 1 to the Principal Regulations shall be amended as provided by regulations 5 to 14.

5. In rule 1 after paragraph (3) there shall be added the following paragraph—

"(3A) Paragraph (1)(*b*) does not apply to an originating application in respect of an application under Article 5C of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981(**4**) for the variation or revocation of a prohibition order, but on any such application the Department shall be treated as the respondent for the purpose of these Rules".

6.—(1) In rule 3(1), for the words "14 days" there shall be substituted "21 days".

(2) For rules 3(3) and (4) there shall be substituted—

"(3) A notice of appearance which—

(a) is presented to the Secretary after the time appointed by paragraph (1) for entering appearances; and

(b) sets out the reasons why the notice has been presented after that time,

shall be deemed to include an application under rule 15 for an extension of the time so appointed on the grounds disclosed by those reasons.

(4) Where a Chairman grants an application under rule 15 for an extension of the time so appointed (including an application deemed to be made by virtue of paragraph (3)) he shall determine whether, having regard to the grounds of the application, it would have been reasonably practicable for the respondent to present his notice of appearance within the time so appointed. If the Chairman determines that it would have been so practicable, the respondent shall be treated as having acted unreasonably for the purposes of rule 12(1) and the Chairman shall make an order under that rule if he considers it appropriate.".

7. Rule 3(5) shall be omitted.

8. For rule 7(8) there shall be substituted—

"(8) The deposit paid by a party under an order made under this rule shall be refunded to him in full except where rule 12(8) applies.".

9. In rule 10(4) for sub-paragraph (*a*) there shall be substituted—

"(a) the proceedings involved the determination of an issue arising under or relating to the Act of 1970, the Order of 1976, the Order of 1988 or the Disability Discrimination Act 1995;".

10. In rule 13(9) the words "and (5)" shall be omitted.

11. In rule 14 after paragraph (1) there shall be inserted the following paragraphs—

"(1A) In proceedings on a complaint under section 8 of the Disability Discrimination Act 1995 in which evidence of a personal nature is likely to be heard by the tribunal it may at any time before promulgation of its decision in respect of an originating application, either

(**4**) S.I. 1981/839 (N.I. 20). Article 5C was inserted by 1994 c. 40 section 35 and Schedule 10 paragraph 2(2)

on the application of the complainant made by notice to the Secretary, or of its own motion, make a restricted reporting order.

(1B) Where the tribunal makes a restricted reporting order under paragraph (1A) and that complaint is being dealt with together with any other proceedings, the tribunal may direct that the order applies also in relation to those other proceedings or such part of them as the tribunal may direct.".

12. In rule 19(5) for sub-paragraphs (*a*) and (*b*) there shall be substituted—

"(5) 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.".

13. After rule 19(8) there shall be inserted the following paragraph—

"(8A) Paragraph (8) does not apply in relation to documents or notices falling within a description of documents or notices in respect of which the Secretary and the Agency have agreed that copies need not be sent.".

14. After rule 19 there shall be inserted the following rule—

"**Reference to the European Court of Justice**

19A. Where a tribunal makes an order referring a question to the European Court of Justice for a preliminary ruling under Article 177 of the Treaty establishing the European Community the Secretary shall send a copy of the order to the Registrar of that Court but shall not do so until the time for appealing against the order has expired or, if an appeal is made within that time, until the appeal has been determined or otherwise disposed of.".

Amendments of rules in Schedule 2

15. The Rules in Schedule 2 to the Principal Regulations shall be amended as provided by regulations 16 to 23.

16. In rule 8A—

(a) for paragraphs (1) to (10) there shall be substituted—

"(1) In any case involving an equal value claim where a dispute arises as to whether work is of equal value to other work in terms of the demands made on the person employed on the work (for instance under such headings as effort, skill and decision) (in this rule, hereinafter referred to as "the question") the tribunal shall, except in cases where it is satisfied that there are no reasonable grounds for determining the question in the

affirmative, determine whether to require an expert to prepare a report with respect to the question.

(2) Before determining under paragraph (1) whether to require an expert to prepare a report, the tribunal shall give the parties an opportunity to make representations to the tribunal as to whether an expert should be so required.

(3) Where the tribunal has determined not to require an expert to prepare a report it may nevertheless, at any time during its consideration of the question require an expert to prepare a report, but shall not do so unless it has given the parties a further opportunity to make representations to the tribunal as to whether an expert should be so required.

(4) Any requirement to prepare a report shall be made in writing and shall set out—

(a) the name and address of each of the parties;

(b) the address of the establishment at which the applicant is (or, as the case may be, was) employed;

(c) the question;

(d) the identity of the person with reference to whose work the question arises;

(e) the date by which the expert is required to send his report to the tribunal; and

(f) the length of the intervals, during the currency of the requirement to prepare the report, before the expiration of which the expert must send progress reports pursuant to paragraph (8).

The Secretary shall send a copy of the requirement to each of the parties together with a notice informing them that a party who unreasonably delays the preparation of the expert's report may have an award of costs made against him which may include an award in respect of the expert's fees, or have his originating application or notice of appearance struck out.

(5) The requirement shall stipulate that the expert shall—

(a) take account of all such information supplied and all such representations made to him as have a bearing on the question;

(b) before drawing up his report, produce and send to the parties a written summary of the said information and representations and invite the representations of the parties upon the material contained therein;

(c) make his report to the tribunal in a document which shall reproduce the summary and contain a brief account of any representations received from the parties upon it, any conclusion he may have reached upon the question and the reasons for that conclusion or, as the case may be, for his failure to reach such a conclusion;

(d) take no account of the difference of sex and at all times act fairly.

(6) Where a tribunal requires an expert to prepare a report, it shall adjourn the hearing.

(7) In paragraphs (8), (9), (10A) and (10B), "the required date" means the most recent date specified as the date by which the expert must send his report to the tribunal either in the requirement made upon him under paragraph (4) or in a notice given to him under paragraph (10A).

(8) Before the expiration of each interval specified in the requirement given to the expert under paragraph (4), the expert shall send a progress report to the tribunal—

(a) stating whether he considers that he will be able to send his report to the tribunal by the required date; and

(b) if he considers that he will be unable to do so, giving the reasons for the delay and the date by which he now expects to send his report to the tribunal.

Where a progress report states that the expert considers that he will be unable to send his report to the tribunal by the required date the Secretary shall send a copy to each party.

(9) If at any time when a progress report under paragraph (8) is not imminent, the expert comes to the view that he will be unable to send his report to the tribunal by the required date, he shall give notice in writing to the tribunal—

(a) stating that fact; and

(b) giving the reasons for the delay and the date by which he now expects to send his report to the tribunal.

The Secretary shall send a copy of any such notice to each party.

(10) In giving the reasons for any delay pursuant to paragraph (8) or (9), the expert shall, in particular, state whether he considers that any action (including an omission) by a party has contributed to the delay and, if he so considers—

(i) identify the party;

(ii) give particulars of the action;

(iii) describe how it has contributed to the delay; and

(iv) give an assessment of the extent to which the delay is attributable to it.

(10A) On receiving a progress report under paragraph (8) or a notice under paragraph (9) stating that the expert considers that he will be unable to send his report to the tribunal by the required date, the tribunal shall do one of the following—

(a) give written notice to the expert that he is still required to send the report by the required date;

(b) give written notice to the expert substituting a later date as the required date; or

(c) if, but only if, it considers that it would be in the interests of justice to replace the expert, revoke, by notice in writing to the expert, the requirement to prepare a report;

but shall not do so before it has informed the parties of the action it proposes to take and given each party the opportunity to make representations.

(10B) Paragraph (10A) shall also apply where the expert does not send his report to the tribunal by the required date but as if sub-paragraph (*a*) were excluded.

(10C) Where, acting under paragraph (10A), a tribunal has revoked the requirement made upon an expert to prepare a report it shall require another expert to prepare a report by proceeding under this rule as if it had just determined to require an expert to prepare a report, and the rule shall apply accordingly.

(10D) Where in giving the reasons for any delay pursuant to paragraph (8) or (9), the expert has, in accordance with paragraph (10), stated that an action by a party has contributed to the delay, the tribunal shall consider whether the party has unreasonably delayed the preparation of the expert's report and, if it so considers, shall either—

(a) make an order under or in accordance with rule 12, or

(b) strike out the whole or part of the originating application, or, as the case may be, of the notice of appearance and, where appropriate, direct that a respondent shall be debarred from defending altogether;

but the tribunal shall not exercise its powers under this paragraph without giving the party an opportunity to make representations.

(10E) Notwithstanding rule 12(1)(*b*), the tribunal may, in making an order under rule 12 in pursuance of paragraph (10D), order that the party shall pay to the Department the

whole, or any part, of any fees and allowances paid or payable to the expert in respect of the time so far spent by him in carrying out work pursuant to the requirement to prepare a report.";

(b) in paragraph (13)—

(i) in sub-paragraph (*a*) for the words "paragraph (3)" there shall be substituted "paragraph (5)";

(ii) at the end, for the words "paragraph (1) shall again apply." there shall be substituted "the tribunal shall proceed under this rule as if it had just determined to require an expert to prepare a report, and the rule shall apply accordingly.";

(c) in paragraph (16) the words "shall be made in accordance with paragraph (2) and" shall be omitted; and

(d) after paragraph (16) there shall be inserted the following paragraph—

"(16A) Paragraphs (4), (7) to (10B), (10D) and (10E) shall apply in relation to a requirement under paragraph (15) as if that requirement was a requirement to prepare a report except that—

(a) the duty on the Secretary under paragraph (4) to send a notice concerning unreasonable delay by the parties of the preparation of the expert's report shall not apply;

(b) for the purpose of such application the following sub-paragraphs shall be substituted for the sub-paragraphs of paragraph (10A)—

"(a) give written notice to the expert that he is still required to send the reply by the required date;

(b) give written notice to the expert substituting a later date as the required date;

(c) notify the expert in writing that the requirement is cancelled without requiring another expert to fulfil it; or

(d) so notify the expert and require another expert to fulfil the requirement in accordance with paragraph (15);" and

(c) the tribunal may decide not to require the expert to send progress reports to the tribunal if it considers the requirement to be inappropriate in the circumstances and in that event—

(i) paragraphs (4)(*f*) and (8) shall not apply; and

(ii) paragraph (9) shall apply if the expert at any time comes to the view that he will be unable to send his reply to the tribunal by the required date.".

17. In rule 9(2D)(*b*) for the words "rule 8A(2)" there shall be substituted "rule 8A(4)".

18. In rule 10(9)(*a*) for the words "by certificate" there shall be substituted "under the chairman's hand".

19. In rule 12(2A) for the words "the investigation carried out by the expert" there shall be substituted "any investigation carried out by an expert".

20. In rule 13(6B) for the words "rule 8A(4)" there shall be substituted "rule 8A(6)".

21. In rule 13(9) the words "and (5)" shall be omitted.

22. In rule 19(5) for sub-paragraphs (*a*) and (*b*) there shall be substituted—

"(5) 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.".

23. After rule 19(8) there shall be inserted—

"(8A) Paragraph (8) does not apply in relation to documents or notices falling within a description of documents or notices in respect of which the Secretary and the Agency have agreed that copies need not be sent.".

Amendment of rule in Schedule 3

24. In Schedule 3 in rule 15(4) for sub-paragraphs (*a*) and (*b*) there shall be substituted—

"(5) 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.".

Amendment of rule in Schedule 4

25. In Schedule 4 in rule 13(4) for sub-paragraphs (*a*) and (*b*) there shall be substituted—

"(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.".

Amendment of rule in Schedule 5

26. In Schedule 5 in rule 12(4) for sub-paragraphs (*a*) and (*b*) there shall be substituted—

"(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.".

Transitional provision

27. The amendments made by regulations 6, 7, 10 and 21 do not apply in relation to proceedings instituted before 3rd November 1996.

Sealed with the Official Seal of the Department of Economic Development on 3rd October 1996.

L.S.

W. D. A. Haire
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 1996 prescribing the procedural rules for proceedings before industrial tribunals in Northern Ireland.

The Regulations come into operation on 3rd November 1996 except for regulations 9 and 11 which relate to proceedings under the Disability Discrimination Act 1995 ("the 1995 Act") which come into operation on 2nd December 1996; that is to say, the date on which section 8 of the 1995 Act comes into force, when it becomes possible to take proceedings against employers under the 1995 Act.

The Regulations make the following principal changes—

(a) a notice of appearance must be presented within 21 days of the respondent receiving a copy of the applicant's originating application instead of 14 days;

(b) tribunals are required to give extended reasons for their decisions in proceedings brought under the 1995 Act;

(c) tribunals are enabled to make restricted reporting orders in proceedings under the 1995 Act;

(d) the procedure applying in equal value cases to the appointment of an expert and the preparation of an expert's report is amended so that—

(i) the amendment to section 2A of the Equal Pay Act (Northern Ireland) 1970 made by the Equal Pay (Amendment) Regulations (Northern Ireland) 1996 having the effect that the tribunal does not have to appoint an expert before determining whether work is of equal value, is reflected in the rules of procedure;

(ii) the tribunal is required to set a date by which an expert's report is required to be sent to it; and

(iii) a party whom the tribunal finds to have delayed the preparation of an expert's report unreasonably will either have an award of costs made against him or have his originating application struck out.

Regulation 27 contains transitional provisions.