

SCHEDULE 3

Regulations 2(3), 6(4) and 9(1)

Industrial Tribunals (Levy Appeals) Rules of Procedure 1996  
*For use in proceedings in levy appeals*

**Notice of appeal**

1. An appeal against an assessment to a levy shall be instituted by the appellant sending to the Board a notice of appeal in Form 1, setting out the grounds of the appeal.

**Action by the Board upon receipt of appeal**

2.—(1) Subject to the provisions of rules 3 and 4, the Board upon receiving the notice of appeal shall send within 21 days to the Secretary—

- (a) a copy of the notice of appeal;
- (b) a copy of the assessment notice and of any notice by the Board allowing further time for appealing;
- (c) a notice giving the Board's address for service under these Rules, where that address is different from the address specified in the assessment notice, as the address for service of a notice of appeal; and
- (d) any representations in writing with respect to the appeal that the Board may think fit.

(2) Failure to comply with any provision of this rule or rule 3 shall not render the appeal or anything done in pursuance thereof invalid.

**Further particulars of appeal**

3.—(1) Subject to rule 4, this rule applies in a case where the Board upon receiving the notice of appeal requires further particulars of the grounds on which the appellant intends to rely and of any facts and contentions relevant thereto.

(2) The Board shall within 21 days of receiving the notice of appeal send to the appellant a notice specifying the further particulars required by the Board.

(3) Within 21 days of receiving a notice under paragraph (2), or within such further period as the Board may allow, the appellant shall send to the Board such further particulars.

(4) Subject to the provisions of paragraph (5) the Board shall, within 21 days of receiving such further particulars, send to the Secretary—

- (a) the documents specified in rule 2;
- (b) a copy of the notice requiring the further particulars; and
- (c) such further particulars, and any representations in writing with respect thereto that the Board may think fit.

(5) If such further particulars are not received by the Board in accordance with paragraph (3), the documents mentioned in paragraph (4)(a) and (b) shall be sent by the Board to the Secretary not later than—

- (a) the fiftieth day after the receipt of the notice of appeal by the Board; or
- (b) if the Board has allowed a further period for the sending of further particulars under paragraph (3), the seventh day after the expiration of that period.

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### **Withdrawal of appeal or assessment**

4.—(1) The appellant may withdraw the notice of appeal by notice given to the Board at any time before the entry of particulars of the appeal in the Register under rule 5(a) and in that event no further action shall be taken in relation to the appeal.

(2) Where an assessment to a levy is withdrawn by the Board, no further action shall be taken in relation to the appeal.

### **Action by Secretary upon receipt of appeal**

5. Upon receiving from the Board the relevant documents in accordance with rules 2(1), 3(4) and (5) the Secretary shall as soon as practicable—

- (a) enter particulars of the appeal in the Register;
- (b) give notice to the appellant and to the Board of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the appeal) and of the address to which notices and other communications to the Secretary shall be sent;
- (c) give notice to the appellant of the Board's address for service under these Rules where that address is different from the address specified in the assessment notice; and
- (d) send to the appellant a copy of any representations in writing by the Board under rule 2(1)(d) or 3(4)(c).

### **Directions for further particulars**

6.—(1) In any case in which an appellant has not sent to the Board further particulars in accordance with a notice sent by the Board under rule 3 the tribunal may, on the application of the Board, by notice direct the appellant to supply such further particulars of the grounds on which he intends to rely and of any facts and contentions relevant thereto as may be specified in the notice, and the appellant shall send such particulars to the Secretary within such time as the tribunal shall direct.

(2) Upon receipt of further particulars from the appellant the Secretary shall send a copy thereof to the Board.

(3) If the appellant fails to comply with a direction made by the tribunal under this rule the tribunal may on the application of the Board dismiss the appeal or give such other directions as it thinks fit.

(4) A tribunal may at any time by notice direct the Board to furnish any particulars relating to the assessment to a levy which appear to be requisite for the decision of the appeal, and thereupon the Board shall send those particulars to the Secretary and to the appellant.

### **Attendance of witnesses and discovery**

7.—(1) A tribunal may on the application of the appellant or the Board 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 the county court to—

- (a) require one party to grant to another discovery and inspection (including the taking of copies) of documents; or
- (b) require the attendance of any person including a party as a witness, wherever such person may be within Northern Ireland; and if it does so require the attendance of a person, to require him to produce any document in his possession or power which relates to the appeal,

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.

(2) Where a requirement has been imposed under paragraph (1)—

- (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.

(3) Every document containing a requirement imposed under paragraph (1) 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.

### **Time and place of hearing of appeal**

8. The President or Vice-President shall fix the date, time and place of the hearing of an appeal, and the Secretary shall, not less than 14 days before the date so fixed, send to the appellant and to the Board a notice of hearing in Form 2.

### **The hearing**

9.—(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) of the No. 1 Order(2).

(3) Notwithstanding paragraph (2), a tribunal may sit in private, if, on the application of the appellant or the Board, 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 the appellant or the Board wishes to submit written representations for consideration by a tribunal at the hearing of the originating application they shall send the 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.

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(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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### **Procedure at hearing**

10.—(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 provision 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 the appeal a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.

(3) If the appellant or the Board or both of them shall fail to attend or to be represented at the time and place fixed for a hearing the tribunal may dispose of the appeal in the absence of such party or parties or may adjourn the hearing to a later date: provided that before disposing of an appeal in the absence of either or both parties the tribunal shall consider any written representations sent by such party or parties under these Rules.

(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**

11.—(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, and that document 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 the appellant and the Board.

(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;
- (b) evidence has been heard in private and the tribunal so directs; or
- (c) the tribunal on the application of the appellant so directs on the ground that disclosure will be contrary to the interests of the appellant,

and in that event a specification of the reasons shall be sent to the appellant and the Board, and to any superior court in any proceedings relating to the decision, together with the copy of the entry in the Register of the document referred to in paragraph (2).

(5) 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.

(6) If a document is corrected by certificate under paragraph (5) the Secretary shall alter any entry in the Register and shall send a copy of any entry so corrected to the appellant and the Board.

(7) 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.

## Costs

12.—(1) The decision of the tribunal may include—

- (a) an order that the Board shall pay to the appellant or that the appellant shall pay to the Board either a specified sum in respect of the costs incurred by the appellant or the Board, as the case may be, or, in default of agreement, the taxed amount of those costs;
- (b) an order that the Board or 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 Industrial Training (Northern Ireland) Order 1984<sup>(3)</sup> to any person, for the purposes of or in connection with, his attendance at the tribunal.

(2) Any costs required by an order under paragraph (1) to be taxed may be taxed in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as shall be directed by the order.

## Miscellaneous powers

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

(2) A tribunal may—

- (a) extend the time appointed by these Rules for doing any act notwithstanding that the time appointed may have expired;
- (b) before granting an application referred to in rule 6(1) or (3), 7(1) or 14, require the party making the application to give notice thereof to the other party;
- (c) postpone the day or time fixed for, or adjourn the hearing and vary any such postponement or adjournment;
- (d) if the appellant shall at any time after the entry of the appeal in the Register give notice of the abandonment of his appeal to the Secretary and to the Board, or the Board gives notice that the appeal is not contested to the Secretary and to the appellant, dismiss or allow the appeal, as the case may be;
- (e) if the appellant and the Board agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;
- (f) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal.

(3) A notice under paragraph (2)(b) shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified by the tribunal for the purposes of the application.

(4) 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 9; and
- (b) an act required or authorised to be so done by rule 10 or 11 which the rule implies is to be done by the tribunal which is hearing or has heard the appeal.

(5) Rule 12 shall apply to an order under paragraph (2)(d) dismissing an appeal.

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(3) S.I. 1984/1159 (N.I. 9)

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## **Applications**

14.—(1) An application to the tribunal for an extension of the time appointed by these Rules for doing any act may be made by the appellant or the Board either before or (subject to rule 7(2)) after the expiration of the time so appointed.

(2) A tribunal may at any time, on the application of an appellant or of its own motion, give directions on any matter arising in connection with the proceedings.

(3) An application made to the tribunal for an extension of the time for appealing against an assessment to a levy shall be made by sending to the Secretary a notice of application which shall state the title of the appeal, or the number of the assessment in the case where an appeal has not been entered in the Register, and shall set out the grounds of the application.

(4) The Secretary shall give notice to the appellant and to the Board of any extension of time granted by the tribunal or of any directions given by the tribunal in pursuance of these Rules.

## **Notices, etc.**

15.—(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 ordinary 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 of appeal or of any other document directed to the Board, the Board's address for service specified in the assessment notice;
- (b) in the case of a document (other than a notice of appeal) directed to the Secretary, the Office of the Tribunals or such other office as may be notified by the Secretary to the appellant and to the Board under rule 5(b);
- (c) in the case of a document directed to the appellant, his address for service specified in a notice given under these Rules or, failing such a notice or if a notice sent to such an address has been returned, his last known address or place of business in the United Kingdom, or if the appellant is a corporate body, such address or place of business or its registered or principal office;

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

(3) The appellant or the Board may at any time by notice to the Secretary and to the other party change the address to which notices and 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.

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

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FORM 1 **The Industrial Training (Northern Ireland) Order 1984** NOTICE OF APPEAL AGAINST ASSESSMENT

To:

CONSTRUCTION INDUSTRY TRAINING BOARD, 17 DUNDROD ROAD, CRUMLIN, CO ANTRIM BT29 4SR

and

THE SECRETARY OF THE INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL

I/We † ..... of \* ..... hereby give notice of an appeal under Article 24(4) of the Industrial Training (Northern Ireland) Order 1984, against the assessment to the levy made by the above-mentioned industry training board on ..... 19 ..... being the assessment numbered .....

**Grounds of Appeal**

The grounds of appeal are as follows: .....

**Address for Service**

All communications regarding the appeal should be addressed to: me/us† at .....

..... to

my/our Solicitor(s)/Agent(s), Mr/Messrs° .....

..... at\*

Date .....

Signed .....

† Delete as appropriate

\* Insert address applicable.

° If the notice is signed on behalf of the appellant, the signatory must state in what capacity or what authority he signs.

Notice is hereby given on behalf of .....

of ..... (name of employer)

FORM 2 **The Industrial Training (Northern Ireland) Order 1984** NOTICE OF HEARING



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Case No. .... \*Office of the Industrial Tribunals  
Tribunal ..... and the Fair Employment Tribunal,  
Long Bridge House  
20-24 Waring Street  
BELFAST BT1 2EB

NOTICE IS HEREBY GIVEN that the appeal of .....  
..... against the assessment to the levy made by  
the Construction Industry Training Board and numbered .....  
will be heard by an industrial tribunal at ..... on the  
..... day of ..... at ..... hours or as soon as  
may be thereafter.

Unless the appellant receives from me a communication to the contrary, he should  
in his own interest appear at the hearing with his witnesses at the above time and  
place.

The appellant is entitled to be represented by counsel or solicitor or by another person.

If for any reason the appellant does not propose, or is unable, to appear at the hearing  
either in person or by representative, the appellant should immediately inform me in  
writing at the address mentioned at the head of this notice, stating the case number  
of the appeal and the reasons for the inability to attend or to be represented.

The appellant and the Board are entitled to submit representations in writing for  
consideration of the tribunal at the hearing of the appeal. Any such representations  
must be sent to the Secretary of the Industrial Tribunals and the Fair Employment  
Tribunal at the address mentioned at the head of this notice not less than seven days  
before the hearing, and a copy must be sent at the same time to the other party. If  
either or both parties fail to attend the hearing, the tribunal may dispose of the appeal  
in their absence, but in such case the tribunal will consider any representations so  
submitted.

Dated .....

Signed .....  
Secretary

To: the Appellant  
and: the Construction Industry Training Board.