

SCHEDULE 5

Regulations 2(4), (6) and (10), 9, 10(6)(b)
and 11(2)

INDUSTRIAL TRIBUNALS (IMPROVEMENT AND
PROHIBITION NOTICES APPEALS) RULES OF PROCEDURE

For use only in proceedings on an appeal against an improvement or prohibition notice

Notice of appeal

1. An appeal 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 improvement notice or prohibition notice appealed against and the address of the premises or place concerned;
- (c) the name and address of the respondent;
- (d) particulars of the requirements or directions appealed against; and
- (e) the grounds of the appeal.

Time limit for bringing appeal

2.—(1) Subject to paragraph (2), the notice of appeal shall be sent to the Secretary within 21 days from the date of the service on the appellant of the notice appealed against.

(2) A tribunal may extend the time mentioned in paragraph (1) where it is satisfied, on an application made in writing to the Secretary either before or after the expiration of that time, that it is not or was not reasonably practicable for an appeal to be brought within that time.

Duty of the Secretary upon receipt of notice of appeal

3. Upon receiving a notice of appeal the Secretary shall –

- (a) enter the following details of the appeal in the Register, namely –
 - (i) the case number;
 - (ii) the date the Secretary received the notice of appeal;
 - (iii) the name and address of the appellant;
 - (iv) the name and address of the respondent;
 - (v) the place where the appeal is to be held; and
 - (vi) the fact that the appeal is an appeal against an improvement or prohibition notice, as the case may be, under Article 26 of the Order of 1978(1);
- (b) send a copy of the notice of appeal to the respondent; and
- (c) inform the parties in writing 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.

(1) Modifications to Article 26 were made by S.I. 1984/1159 (N.I. 9) and by S.R. 2000 No. 87, the latter of which under specific circumstances extended the meaning of “employee” and “at work” for the purposes of Regulations made under Part II of the Order of 1978. Further modifications were made by S.R. 2000 No. 120, which extended the definitions of “work” and “at work” for the purposes of Part II of that Order

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Application for direction suspending the operation of a prohibition notice

4.—(1) Where an appeal has been brought against a prohibition notice and an application is made to the tribunal by the appellant in pursuance of Article 26(2)(b) of the Order of 1978 for a direction suspending the operation of the notice until the appeal is finally disposed of or withdrawn, the application shall be sent in writing to the Secretary and shall set out –

- (a) the case number of the appeal if known to the appellant or particulars sufficient to identify the appeal; and
- (b) the grounds on which the application is made.

(2) Upon receiving the application, the Secretary shall enter the fact of it against the entry in the Register relating to the appeal and shall send a copy of it to the respondent.

Power to require attendance of witnesses and production of documents, etc.

5.—(1) A tribunal may on the application of a party made either by notice to the Secretary or at the hearing –

- (a) require a party to furnish in writing to the other party further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) require the attendance of any person in Northern Ireland, including a party, either to give evidence or to produce any documents or both; or
- (c) require one party to grant to another such discovery or inspection (including the taking of copies) of documents as might be granted by a county court,

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) 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 apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be 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, each party other than the party making the application.

(3) If a requirement under paragraph (1) is not complied with, the tribunal –

- (a) may make an order in respect of costs under rule 11(1); or
- (b) before or at the hearing, may strike out the whole or part of the notice of appeal,

but a tribunal shall not exercise its powers under this paragraph 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, or the party has been given an opportunity to show cause orally why the powers conferred by this paragraph should not be exercised.

(4) Every document containing a requirement under paragraph (1)(b) or (c) shall contain a reference to the fact that, under Article 9(4) of the Industrial Tribunals 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 and appointment of assessor

6.—(1) The President or the 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), representation by another person and written representations.

(2) Where the President or the Vice-President so directs, the Secretary shall also send notice of the hearing to such persons as may be directed, but the requirement as to the period of notice contained in paragraph (1) shall not apply to any such notice.

(3) The President or the Vice-President may, if he thinks fit, appoint in pursuance of Article 26(3) of the Order of 1978 a person or persons having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal as assessor or assessors.

The hearing

7.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with Article 6(1), (2) and (3) of the Industrial Tribunals Order.

(2) Subject to paragraph (3), any hearing of or in connection with an appeal shall take place in public.

(3) A tribunal may sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of –

- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision;
- (b) 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
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Order of 1992, cause substantial injury to any undertaking of his or any undertaking in which he works.

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

(5) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Secretary less than 7 days before the hearing.

Procedure at hearing

8.—(1) At any hearing of or in connection with an appeal a party shall be entitled to make an opening statement, to give evidence on his own behalf, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2) 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 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 7(4) or (5).

(3) 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

9.—(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.

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(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) The clerk shall transmit the document signed by the chairman 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 reasons for the decision shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs.

(5) The chairman of a tribunal shall have power by certificate to correct in the document recording the tribunal's decision clerical mistakes or errors arising therein from any accidental slip or omission.

(6) The clerk shall send a copy of any document corrected under paragraph (5) and the certificate of the chairman to the Secretary who shall as soon as practicable make such correction as may be necessary in the Register and shall send a copy of the corrected entry or of the corrected reasons, as the case may be, to each of the parties.

(7) If any decision is –

- (a) corrected under paragraph (5);
- (b) revoked or varied under rule 10; or
- (c) 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 and, where the proceedings were referred to the tribunal by a court, to that court.

(8) 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

10.—(1) Subject to the provisions of this rule, a tribunal shall have power, on the application of a party or of its own motion, to review any decision on the grounds that –

- (a) the decision was wrongly made as a result of an error on the part of the staff of the Office of the Tribunals;
- (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 issued the decision.

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

- (a) 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; and
- (b) such notice has been sent on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties.

(4) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing,

but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.

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

(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 12(4),

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

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

Costs

11.—(1) A tribunal may make an order that a party shall pay to the other party either a specified sum being the sum agreed between them in respect of the costs of or in connection with an appeal incurred by that other party or, in default of agreement, the amount of those costs as assessed by way of detailed assessment.

(2) Any costs required by an order under this rule to be assessed by way of detailed assessment may be so assessed in accordance with such of the scales prescribed by county court rules for proceedings in the county court as shall be directed by the order.

Miscellaneous powers

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

(2) A tribunal may –

- (a) before granting an application under rule 5 or 10 require the party making the application to give notice thereof to the other party;
- (b) 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;
- (c) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;
- (d) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;
- (e) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(3) A chairman may postpone the day or time fixed for, or adjourn, any hearing and vary any such postponement or adjournment.

(4) Any act required or authorised by these Rules to be done by a tribunal may be done by a chairman except –

- (a) the granting of an extension of time under rule 2(2);
- (b) the hearing of an appeal under rule 7;

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- (c) an act required or authorised to be so done by rule 8 or 9 which the rule implies is to be done by the tribunal which is hearing or heard the appeal;
- (d) the hearing of an application under rule 10(1), and the variation or revocation of a decision, and ordering of a re-hearing, under rule 10(7).

Devolution issues

13.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time –

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send each of the relevant authorities a copy of the notice of appeal.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

Notices, etc.

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

(2) All notices and documents required by these Rules to be presented to the Secretary may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary to the parties.

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

- (a) in the case of a notice or document directed to the Department in proceedings to which it is not a party, the offices of the Department for Employment and Learning at Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD, or such other office as may be notified by the Department;
- (b) in the case of a notice or document directed to the Attorney General for Northern Ireland pursuant to rule 13, the Attorney General's Chambers, 9 Buckingham Gate, London SW1E 7JP;
- (c) in the case of a notice or document directed to a party –
 - (i) the address specified in his notice of appeal to which notices and documents are to be sent, or in a notice under paragraph (4); or
 - (ii) if no such address has been 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 the Vice-President may allow;
- (d) in the case of a document directed to any person (other than a person specified in the foregoing provisions of this paragraph), 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 authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party 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.

(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.

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

(7) In the case of an appeal to which the respondent is an inspector appointed otherwise than by the Health and Safety Executive for Northern Ireland, the Secretary shall send to that Executive copies of the notice of appeal and the document recording the decision of the tribunal on the appeal.