

2011 No. 161

EMPLOYMENT

The Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2011

Made - - - - - *24th March 2011*

Coming into operation - - - - - *3rd April 2011*

The Department for Employment and Learning^(a) makes the following Regulations in exercise of the powers conferred by Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978^(b) and Articles 3(1), 6(6)^(c), and (6A)^(d), 9(1), (2), (3)^(e), (3ZA)^(f), (3A)^(g) and (5), 11(1)^(h) and (4), 13(1) and (1B)⁽ⁱ⁾, 21^(j) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996^(k) and now vested in it^(l).

Citation and commencement

1. These Regulations may be cited as the Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2011 and shall come into operation on 3rd April 2011.

Amendment of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005

2. The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005^(m) shall be amended as set out in regulations 3 to 8.

Amendment of Regulations

3.—(1) In regulation 2, after the definition of “the Disability Discrimination Act”, insert –

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- (a) Formerly the Department of Higher and Further Education, Training and Employment; *See* 2001 c. 15 (N.I.).
- (b) S.I. 1978/1039 (N.I. 9); Article 26 was modified by S.I. 1984/1159 (N.I. 9), Schedule 4; its interpretation was modified by S.R. 2000 No. 87, regulation 2; S.R. 2000 No. 120, regulation 19; and 2002 c. 8 (N.I.), s. 1.
- (c) Article 6(6) was amended by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 16(3).
- (d) Article 6A was inserted by S.I. 1998/1265 (N.I. 8), Article 4(5).
- (e) Article 9(3)(f) was modified by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 18(2) and Schedule 2, and by S.I. 2003/2902 (N.I. 15), Article 3(1).
- (f) Article 9(3ZA) was inserted by S.I. 2003/2902 (N.I. 15), Article 4.
- (g) Article 9(3A) was inserted by S.I. 1998/1265 (N.I. 8), Article 3 and modified by S.I. 2003/2902 (N.I. 15), Article 5.
- (h) Article 11(1) was amended by S.I. 2003/2902 (N.I. 15), Article 7(2).
- (i) Article 13, paragraph (1) was amended and paragraph (1B) was inserted by 2011 c. 13 (N.I.), s. 6(3).
- (j) Article 21 was modified by S.I. 2003/2902 (N.I. 15), Article 3(3) and (4), paragraph 3 of Schedule 5 and Schedule 6 and by 2011 c. 13 (N.I.), s. 9(2).
- (k) S.I. 1996/1921 (N.I. 18).
- (l) *See* S.R. 1999 No. 481.
- (m) S.R. 2005 No. 150 as amended by S.R. 2005 No. 376, S.R. 2005 No. 578, S.R. 2006 No. 261, S.R. 2007 No. 340, S.R. 2007 No. 494, 2009 c. 3 and 2010 c. 3 (N.I.).

““the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16));”.

(2) After regulation 9 insert –

“Power of Fair Employment Tribunal to exercise functions of industrial tribunal

9A.—(1) This regulation applies where, under Article 85 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (S.I. 1998/3162 (N.I. 21)), the President or Vice-President has directed that a matter that would otherwise fall to be determined by a tribunal shall be heard and determined by the Fair Employment Tribunal.

(2) Any function of the tribunal specified in these regulations and in Schedules 1 to 6 may be carried out by the Fair Employment Tribunal as though it were a tribunal constituted under these Regulations.”.

Amendment of Schedule 1

4.—(1) Schedule 1 is amended as set out in paragraphs (2) to (19).

(2) In rule 1 –

- (a) in paragraph (1) delete “paragraph (5) and”;
- (b) in paragraph (4) delete “paragraph (5) and to”;
- (c) in paragraph (4)(g) at the end insert “and”;
- (d) in paragraph (4)(h) for “;” substitute “.”;
- (e) delete paragraphs (4)(i) to (k);
- (f) delete paragraphs (5), (6) and (8).

(3) In rule 2 in paragraph (2) –

- (a) delete sub-paragraph (e);
- (b) in sub-paragraph (f) at the end insert “and”.

(4) in rule 3 –

- (a) at the end of paragraph (1)(a) insert “or”;
- (b) in paragraph (1)(b) for “; or” substitute “.”;
- (c) delete paragraph (1)(c);
- (d) delete paragraph (5);
- (e) in paragraph (6) for “paragraphs (5) and (7)” substitute “paragraph (7)”.

(5) In rule 4 –

- (a) in paragraph (1) for “paragraph (5)” substitute “paragraphs (5) to (5C)”;
- (b) for paragraph (5) substitute –

“(5) The respondent may apply for an extension of the time limit within which he is to present his response and he must, at the same time as the application is sent to the Office of the Tribunals, provide all other parties with details of the application and the reasons why it is made and confirm in writing to the Office of the Tribunals that he has done so.

(5A) If the application under paragraph (5) is presented to the Office of the Tribunals within 28 days of the date on which the respondent was sent a copy of the claim, it must explain why the respondent cannot comply with the time limit.

(5B) If the application under paragraph (5) is presented to the Office of the Tribunals more than 28 days after the date on which the respondent was sent a copy of the claim, it must explain why the respondent did not comply with the time limit and be accompanied by a completed response which includes all the required information specified in paragraph (4).

(5C) The chairman shall only extend the time limit within which a response must be presented if he is satisfied that it is just and equitable to do so.

(5D) Where a respondent's application under paragraph (5) is refused the Secretary shall inform the parties in writing of such refusal unless the application is refused at a hearing.

(5E) If the chairman makes an order extending or refusing to extend the time within which a response must be presented, any application to set it aside must be made in writing to the Office of the Tribunals within 7 days of the date on which the order was sent to the parties.”;

(c) after paragraph (7) insert –

“(8) This rule is subject to section 12 of the State Immunity Act 1978.”(a).

(6) In rule 6 –

(a) in paragraph (2), after “in accordance with the criteria in paragraph (1)” insert “, read with rule 4(5C),”;

(b) in paragraph (5), for “should have been” substitute “is to be”.

(7) In rule 8 –

(a) for paragraph (1) substitute –

“(1) Subject to paragraphs (2A) and (6), if the relevant time limit for presenting a response in any proceedings has expired, a chairman may, in the circumstances set out in paragraph (2), issue a default judgement to determine the claim without a hearing.”;

(b) in paragraph (2)(b) delete “so”;

(c) after paragraph (2) insert –

“(2A) No default judgement need be issued where the chairman –

(a) is not satisfied that the tribunal has jurisdiction to consider the claim, or part of it;
or

(b) has sufficient evidence to conclude that the claim form has not been received by the respondent.”;

(d) in paragraph (4) after “The Secretary shall also inform the parties of their right to” insert “apply to”;

(e) for paragraph (6) substitute –

“(6) A default judgement shall not be issued where the parties have settled the proceedings (either by means of a compromise agreement or through the Agency). If a default judgement is issued in these circumstances it shall have no effect.”.

(8) In rule 10 –

(a) for paragraph (2)(e) substitute –

“(e) except where otherwise provided in these Rules, extending any time limit, whether or not expired;”;

(b) delete paragraph (2)(g);

(c) in paragraph (8) between “shall” and “inform” insert “(except where the order is for a witness order described in rule 10(2)(c) only)”.

(9) In rule 11 –

(a) in paragraph (4) for “(except where the application is for a witness order described in rule 10(2)(c) only)” substitute “(except where the application is for an order extending the time limit within which a response must be presented under rule 4(5) or a witness order described in rule 10(2)(c))”;

(b) in paragraph (4)(a) for “sought” substitute “made”;

(a) 1978 c. 33.

(c) for paragraph (4)(b) substitute –
“(b) notification that any objection to the application must be sent to the Office of the Tribunals within 7 days of receiving the application or, if a hearing of any type is due to take place before the expiry of that 7 day period, before the date of that hearing; and”;

(d) after paragraph (4) insert –
“(4A) The time limit described in paragraph (4)(b) may be varied where the chairman or tribunal considers it in the interests of justice to do so.”;

(e) for paragraph (5) substitute –
“(5) Where a party is not legally represented in relation to the application, the Secretary shall (except where the application is for an order extending the time limit within which a response must be presented under rule 4(5) or a witness order described in rule 10(2)(c)) send a copy of the application to all other parties and inform them of the matters listed in paragraph (4)(b) and (c).”.

(10) In rule 14 after paragraph (1)(b) insert –
“(bb) a hearing dealing with interim relief as described in rule 18A;”.

(11) In rule 18 –
(a) in paragraph (2)(d) for “;” substitute “.”;
(b) delete paragraph (2)(e);
(c) in paragraph (3) delete “and (2)”.

(12) After rule 18 insert –

“Interim relief

18A.—(1) Hearings dealing with interim relief are interim hearings.

(2) Subject to the provisions applying to interim relief of the Employment Rights Order and the Industrial Tribunals Order, these rules shall apply when dealing with the following applications as they apply to pre-hearing reviews –

- (a) an application made under Article 163 of the Employment Rights Order for interim relief;
- (b) an application made under Article 166 of the Employment Rights Order to vary or revoke an order.”.

(13) Delete rules 22 to 24.

(14) In rule 25(4) from “The proceedings or the relevant part of the proceedings so withdrawn cannot be continued” to the end substitute “The claimant may not commence a further claim against the respondent for the same, or substantially the same, cause of action in the tribunal (unless the decision to dismiss is successfully reviewed or appealed).”.

(15) After rule 25 insert –

“Automatic dismissal of proceedings where an Agency settlement has been reached

25A.—(1) Where a settlement has been concluded between the parties as a result of action taken by the Agency under Article 20 of the Industrial Tribunals Order and where the Office of the Tribunals has received written confirmation from the Agency that a settlement has been concluded, the chairman shall dismiss the proceedings covered by that settlement.

(2) Where proceedings are dismissed under paragraph (1), the claimant may not commence a further claim against the respondent for the same, or substantially the same, cause of action in the tribunal (unless the decision to dismiss is successfully reviewed or appealed).”.

(16) In rule 33 –

- (a) in paragraph (2) after “proposed response to the claim” insert “(where that has not been received by the Office of the Tribunals)”;
 - (b) after paragraph (2) insert –
 - “(2A) An application under paragraph (1) may be given preliminary consideration (without the need to hold a hearing) by a chairman, who may refuse the application if the requirements of paragraph (2) have not been met.”;
 - (c) in paragraph (3) after “a chairman in public” insert “unless all the parties to the proceedings consent in writing to the review without a hearing”; and
 - (d) after paragraph (7) insert –
 - “(8) A chairman may on his own initiative review a default judgement on the grounds set out in rule 34(3)(a), (b) and (e).”.
- (17) In rule 50 for paragraph (1) substitute –
- “(1) A restricted reporting order may be made in any proceedings –
 - (a) involving allegations of sexual misconduct;
 - (b) involving a complaint under section 17A or 25(8) of the Disability Discrimination Act in which evidence of a personal nature is likely to be heard by the tribunal or chairman;
 - (c) where the disclosure of identifying matter would be likely to cause an individual (“I”) (whether a party to the proceedings or not) to be subjected to harassment;
 - (d) where such disclosure would be likely to cause I, or any property of I, to be placed at risk of injury or damage; or
 - (e) where, in the opinion of the tribunal or chairman, the interests of justice otherwise require such an order to be made.”(a).
- (18) After paragraph (3) of rule 59 insert –
- “(4) Where the Attorney General for Northern Ireland makes a request to search for, inspect and take a copy of any relevant documents within a case file (including documents held electronically) for the purpose of preparing an application or considering whether to make an application under section 32 of the Judicature (Northern Ireland) Act 1978 (restriction on institution of vexatious actions), the Secretary shall send notice of or a copy of any relevant document which relates to any proceedings before the tribunal, or any decision, order or award of the tribunal.”(b).
- (19) In rule 60 –
- (a) in paragraph (1)(b) delete “fax or other”;
 - (b) in paragraph (2)(b) delete “fax or other”;
 - (c) for paragraph (4)(c) substitute –
 - “(c) in the case of a notice or document under rule 56 that is directed to –
 - (i) the Attorney General for Northern Ireland, the Office of The Attorney General for Northern Ireland, Lesley House, 25 Wellington Place, Belfast BT1 6GD;
 - (ii) the Attorney General, 20 Victoria Street, London SW1H 0NF;
 - (iii) the First Minister, Parliament Buildings, Ballymiscaw, Stormont, Belfast BT4 3XX;
 - (iv) the deputy First Minister, Parliament Buildings, Ballymiscaw, Stormont, Belfast BT4 3XX;”.

(a) Section 17A of the Disability Discrimination Act 1995 (1995 c. 50) was originally section 8 and was renumbered by, and section 25(8) was inserted by, the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (S.I. 2003/1673).
 (b) See the Judicature (Northern Ireland) Act 1978 (1978 c. 23).

Amendment of Schedule 3

5. In rule 3 of Schedule 3 –
- (a) delete paragraph (2);
 - (b) in paragraph (3) after “stage 1 equal value hearing the” insert “chairman or”.

Amendment of Schedule 4

6. In rule 8 of Schedule 4 for “18(2)(c) and (e)” substitute “18(2)(c), 18A”.

Amendment of Schedule 5

7. In rule 10 of Schedule 5 –
- (a) after “18(2)(c)” delete “and (e)”;
 - (b) after “18(8),” insert “18A,”.

Amendment of Schedule 6

8. In rule 4 of Schedule 6 for “18(2)(c) and (e)” substitute “18(2)(c), 18A”.

Transitional and saving provisions

9.—(1) Regulation 4(2) and (4) shall not have effect in relation to proceedings where the following provisions of the Employment (Northern Ireland) Order 2003(a) apply –

- (a) Articles 19 to 22;
- (b) in Schedule 1 –
 - (i) Part 2;
 - (ii) in paragraph 14 the words “and (5)” and “and “grievance hearing””;
 - (iii) paragraph 15,
- (c) Schedule 3.

(2) Regulation 4(7) shall not have effect in relation to proceedings where those proceedings were commenced on or before 2nd April 2011.

(3) Regulation 4(15) shall not have effect where the parties settle the proceedings through the Agency on or before 2nd April 2011.

(4) Regulation 4(16)(d) shall not have effect in relation to proceedings where a default judgement has been issued on or before 2nd April 2011.

(5) Regulation 5 shall not have effect in relation to proceedings where all the parties have been notified on or before 2nd April 2009 that a stage 1 equal value hearing has been listed.

Sealed with the Official Seal of the Department for Employment and Learning on 24th March 2011.



Danny Kennedy
Minister for Employment and Learning

(a) S.I. 2003/2902 (N.I. 15).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 (S.R. 2005 No. 150) (“the 2005 Regulations”), the most substantive amendments to which have previously been made by S.R. 2005 No. 376 and S.R. 2005 No. 578.

The Regulations make consequential amendments arising out of the Employment Act (Northern Ireland) 2011, which repeals aspects of the statutory dispute resolution procedures introduced under Part 4 the Employment (Northern Ireland) Order 2003 and makes changes in respect of conciliation by the Labour Relations Agency. Additionally, the Regulations make procedural changes to tribunal practice, including in relation to responses, default judgements, matters to be heard without a hearing and withdrawal of proceedings, as well as applying minor clarifications to the main Regulations.

Regulation 4 makes amendments to Schedule 1 to the 2005 Regulations.

Regulation 4(5) makes changes to the procedure specified under rule 4 of Schedule 1 to the 2005 Regulations which is used by industrial tribunals when considering the acceptance of a response to a claim.

Regulation 4(7) amends rule 8 to modify the procedure relating to default judgements.

Regulation 4(13) removes provisions relating to time limits on conciliation by repealing rules 22 to 24.

Regulation 4(15) adds a new rule 25A, to provide for the automatic dismissal of proceedings following receipt of notification that the Labour Relations Agency has concluded a conciliated settlement of the case.

Regulation 4(16) provides that a preliminary consideration of an application under rule 33 to review a default judgement can take place without a hearing, and that the parties may consent in writing to the review of the application taking place without a hearing.

Regulation 5 amends rule 3 of Schedule 3 to the 2005 Regulations to enable a chairman sitting alone to hear stage 1 equal value claims.

Regulations 6, 7 and 8 make minor amendments, respectively, to Schedules 4, 5 and 6 to the 2005 Regulations.

Regulation 9 provides for transitional arrangements in relation to these Regulations. Paragraph (1) harmonises arrangements for the repeal of aspects of the statutory dispute resolution procedures in the Employment (Northern Ireland) Order 2003 with the similar provisions of the Employment Act (Northern Ireland) 2011 (Commencement No. 1, Transitional Provisions and Savings) Order (Northern Ireland) 2011 (S.R. 2011 No. 159 (C. 8)). Paragraphs (2) to (5) provide for transitional arrangements in relation to default judgements, the automatic dismissal of proceedings where a Labour Relations Agency settlement has been reached, the power of a chairman to review a default judgement on his own initiative, and the changes to stage 1 equal value hearings respectively.

An impact assessment dealing with policy changes taken forward in the Employment Act (Northern Ireland) 2011, aspects of which these Regulations implement in relation to industrial tribunals, is available from the Department for Employment and Learning, Adelaide House, 39-49 Adelaide Street, Belfast BT2 8FD or from www.delni.gov.uk.

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(Amendment) Regulations (Northern Ireland) 2011

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