STATUTORY RULES OF NORTHERN IRELAND

2011 No. 162

The Fair Employment Tribunal (Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2011

Amendment of Schedule 1 to the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005

2.—(1) Schedule 1 to the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005(**1**) is amended in accordance with paragraphs (2) to (14).

(2) In rule 1 (starting a claim) –

(a) in paragraph (1) omit "(subject to paragraph (5))";

(b) in paragraph (4) for "Subject to paragraph (5), the required information" substitute "The required information";

(c) in paragraph (4)(e) after the semicolon add "and";

(d) in paragraph (4)(f) for the semicolon substitute a full stop;

(e) omit paragraphs (4)(g) and (h);

(f) omit paragraphs (5) and (7).

(3) In rule 2 (what the Tribunal does after receiving the claim), in paragraph (2)(e) after the semicolon add "and".

(4) in rule 3 (when the claim will not be accepted by the Secretary) –

(a) in paragraph (1)(a) after the semicolon add "or";

(b) in paragraph (1)(b) from the semicolon to the end substitute a full stop;

(c) omit paragraph (1)(c);

(d) omit paragraph (5);

(e) in paragraph (6) omit "(5) and".

(5) In rule 4 (responding to the claim) –

(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

(**1**) S.R. 2005 No. 151 as amended by S.R. 2005 No. 579, 2009 c. 3 and 2010 c. 3 (N.I.).

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) add –

"(8) This rule is subject to section 12 of the State Immunity Act 1978."(**2**).

(6) In rule 6 (when the response will not be accepted by the Secretary) –

(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 7 (default judgements) –

(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) omit "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 9 (general power to manage proceedings) –

(a) for paragraph (2)(e) substitute –

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

(b) in paragraph (8) between "shall" and "inform" insert "(except where the order is for a witness order described in rule 9(2)(c) only)".

(9) In rule 10 (applications in proceedings) –

(**2**) 1978 c. 33.

(a) in paragraph (4) for "(except where the application is for a witness order described in rule 9(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 9(2)(c))";

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

(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 9(2)(c)) send a copy of the application to all other parties and inform them of the requirements set out in paragraph (4)(b) and (c).".

(10) In rule 21 (right to withdraw proceedings), in paragraph (4) for the words 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).".

(11) After rule 21 (right to withdraw proceedings) insert –

"**Automatic dismissal of proceedings where an Agency settlement has been reached**

21A.—(1) Where a settlement has been concluded between the parties as a result of action taken by the Agency under Article 88 of the Fair Employment and Treatment 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).".

(12) In rule 29 (review of default judgements) –

(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 any of the grounds set out in rule 30(3)(a), (b) or (e).".

(13) In rule 46 (powers), after paragraph (3) 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."(**3**).

(14) In rule 47 (notices, etc.) –

(a) in paragraph (1)(b) omit "fax or other";

(b) in paragraph (2)(b) omit "fax or other";

(c) for paragraph (4)(b) substitute –

"(b) in the case of a notice or document under rule 43 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;".

(**3**) *See* the Judicature (Northern Ireland) Act 1978 (1978 c. 23).