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STATUTORY INSTRUMENTS

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**1999 No. 2131**

**NORTHERN IRELAND**

**Northern Ireland Act Tribunal (Procedure) Rules 1999**

*Made* - - - - - *28th July 1999*

*Coming into force* - - - - - *29th July 1999*

The Lord Chancellor, in exercise of the powers conferred by sections 91 and 92 of the Northern Ireland Act 1998(1), makes the following Rules of which a draft has, in accordance with section 96(6) of that Act, been laid before and approved by resolution of each House of Parliament:–

**PART I**

**GENERAL PROVISIONS**

**Citation and commencement**

1. These Rules may be cited as the Northern Ireland Act Tribunal (Procedure) Rules 1999 and shall come into force on the day after the day on which they are made.

**Interpretation**

2. In these Rules–

“the 1998 Act” means the Northern Ireland Act 1998;

“certificate” means a certificate referred to in section 90 of the 1998 Act, Article 80 of the Fair Employment and Treatment (Northern Ireland) Order 1998(2), Article 53ZA of the Sex Discrimination (Northern Ireland) Order 1976(3) or Article 41A of the Race Relations (Northern Ireland) Order 1997(4);

“special advocate” means a person appointed under section 91(7) of the 1998 Act to represent the interests of a party to proceedings before the Tribunal;

“the Tribunal” means the tribunal established under section 91 of the 1998 Act.

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(1) 1998 c. 47.

(2) S.I.1998/3162 (N.I. 21).

(3) S.I. 1976/1042 (N.I. 15), to which the relevant amendment is in Article 96 of the Fair Employment and Treatment (NI) Order 1998.

(4) S.I. 1997/869 (N.I. 6), to which the relevant amendment is in Article 98 of the Fair Employment and Treatment (NI) Order 1998.

### **General duty of the Tribunal**

3.—(1) When exercising its functions, the Tribunal shall secure that information is not disclosed contrary to the interests of national security, public safety or public order or in any other circumstances where disclosure is likely to harm a public interest.

(2) References in these Rules to disclosure contrary to the public interest shall be construed in accordance with paragraph (1).

(3) The Tribunal shall satisfy itself that the material available to it enables it properly to review decisions.

### **Delegated powers**

4.—(1) The powers of the Tribunal under the following provisions may be exercised by the chairman or by any other member of the Tribunal—

- (a) rule 13(1) and (3) (amendment and supplementary grounds);
- (b) rule 14 (directions);
- (c) rule 24 (application for leave to appeal).

(2) Where the chairman or member exercises any power of the Tribunal, references to the Tribunal in the Rules shall as appropriate be construed as references to him.

### **Notices, etc.**

5.—(1) Any document or notice required or authorised by these Rules to be sent or given to the Tribunal, shall be sent or given to the clerk to the Tribunal.

(2) The appellant may by notice to the Tribunal change his address for service under these Rules.

## **PART II**

### **PROCEEDINGS BEFORE TRIBUNAL ON APPEAL**

#### **Parties to appeal**

6.—(1) The parties to proceedings before the Tribunal on an appeal are the appellant and the person proposing to rely on the certificate.

(2) Subject to rules 12(2) and 18(1), the parties may appear in person or be represented by—

- (a) counsel or a solicitor; or
- (b) with the leave of the Tribunal, any other person.

(3) Where the Secretary of State is not the person relying on the certificate but gives notice to the Tribunal under rule 10(1)(a), he shall be treated from the date of that notice as a party; and references in these Rules to parties shall be construed accordingly.

#### **Time limit for appealing**

7. The appellant may exercise his right of appeal to the Tribunal by giving notice of an appeal, in accordance with rule 8, within 14 days after receiving notice that a certificate has been issued.

#### **Notice of appeal**

8.—(1) An appeal to the Tribunal is made by sending to the Tribunal a notice of appeal.

(2) There shall be attached to the notice of appeal a copy of the certificate issued in the proceedings in which the appellant claims that an act discriminated against him.

(3) The notice of appeal shall set out the grounds of appeal against the certificate.

(4) The notice of appeal shall state the name and address of the appellant and of any representative of the appellant, and shall be signed by the appellant or his representative.

(5) As soon as practicable after he receives the notice of appeal, the clerk to the Tribunal shall send a copy to the person proposing to rely on the certificate and, where that person is not the Secretary of State, to the Secretary of State.

### **Special advocates**

**9.—(1)** On receiving a copy of the notice of appeal, the Secretary of State shall inform the Attorney General for Northern Ireland of the proceedings before the Tribunal, with a view to the Attorney General for Northern Ireland, if he thinks fit to do so, appointing either or both of the following—

- (a) a special advocate to represent the interests of the appellant;
- (b) a special advocate to represent the interests of the person proposing to rely on the certificate, where that person is not the Secretary of State.

(2) Paragraph (1) applies unless the Secretary of State does not intend to argue that the certificate should be upheld.

(3) The function of a special advocate is to represent the interests of a party, as mentioned by paragraph (1), by—

- (a) making submissions to the Tribunal in any proceedings from which that party and his representative are excluded;
- (b) cross-examining witnesses at any such proceedings; and
- (c) making written submissions to the Tribunal.

(4) Except in accordance with paragraphs (5) to (8), a special advocate may not communicate directly or indirectly with the party whose interests he has been appointed to represent on any matter connected with proceedings before the Tribunal.

(5) A special advocate may communicate with the party whose interests he has been appointed to represent at any time before the Secretary of State makes material available to him under rule 10(3) or 11(4).

(6) At any time after the Secretary of State has made material available to him under rule 10(3) or 11(4), a special advocate may seek directions from the Tribunal authorising him to seek information in connection with the proceedings from the party whose interests he has been appointed to represent.

(7) In paragraphs (4) to (6) a reference to a party whose interests the special advocate has been appointed to represent includes the representative of that party.

(8) The clerk to the Tribunal shall notify the Secretary of State of a request for directions under paragraph (6) and the Secretary of State shall, within 14 days of receipt of notification under this paragraph, give the Tribunal notice of any objection which he has to the request for information being made or to the form in which it is proposed to be made.

### **Secretary of State's reply**

**10.—(1)** If the Secretary of State intends to argue that the certificate should be upheld—

- (a) he shall give the Tribunal written notice that this is the case; and

(b) within 42 days after receiving a copy of the notice of appeal, he shall provide the Tribunal with a summary of the facts justifying the certificate and a statement of the evidence which he relies upon in support of the certificate.

(2) Where the Secretary of State objects to material referred to in paragraph (1)(b) being disclosed to either or both of the parties to the appeal, he shall also—

(a) state the reasons for his objection; and

(b) if and to the extent that it is possible to do so without disclosing information contrary to the public interest, provide a statement of the material in a form which can be shown to that party or those parties.

(3) Where he makes an objection under paragraph (2), the Secretary of State shall make available to each special advocate, at the request of the clerk to the Tribunal, the material which he has provided to the Tribunal under paragraphs (1) and (2).

(4) Before requesting the Secretary of State to send this material to the special advocate, the clerk to the Tribunal shall enquire of each special advocate whether he has had an opportunity to communicate in accordance with rule 9(5) with the party whose interests he has been appointed to represent.

#### **Other party's reply**

**11.**—(1) If the person proposing to rely on the certificate, where that person is not the Secretary of State, intends to argue that the certificate should be upheld—

(a) he shall give the Tribunal written notice that this is the case; and

(b) within 42 days after receiving a copy of the notice of appeal, he shall provide the Tribunal with a summary of the facts relating to the act specified in the certificate.

(2) The clerk to the Tribunal shall send to the Secretary of State a copy of any material provided under paragraph (1)(b).

(3) Where the Secretary of State objects to the material being disclosed to the appellant or his representative, he shall in a notice to the Tribunal—

(a) state the reasons for his objection; and

(b) if and to the extent that it is possible to do so without disclosing information contrary to the public interest, provide a statement of the material in a form which can be shown to the parties.

(4) Where he makes an objection under paragraph (3), the Secretary of State shall make available to each special advocate, at the request of the clerk to the Tribunal, the material provided under paragraphs (1)(b) and (3).

(5) Before requesting the Secretary of State to send this material to the special advocate, the clerk to the Tribunal shall enquire of each special advocate whether he has had an opportunity to communicate in accordance with rule 9(5) with the party whose interests he has been appointed to represent.

#### **Consideration of Secretary of State's objection**

**12.**—(1) This Rule applies where the Secretary of State makes an objection under rule 9(8), 10(2) or 11(3), or makes an application under rule 16(3).

(2) The parties (other than the Secretary of State) and their representatives shall be excluded from proceedings to which this rule applies.

(3) The Tribunal shall decide whether to uphold the objection or grant the application.

(4) Before doing so, the Tribunal shall invite each special advocate to make written representations.

(5) After considering representations made under paragraph (4), the Tribunal may—

- (a) invite each special advocate to make oral representations; or
- (b) uphold the objection or grant the application without requiring further representations from the special advocate.

(6) Where the Tribunal is minded to overrule the objection or to refuse the application, or to require the Secretary of State to provide material in a different form from that in which he has provided it under rule 10(2)(b) or 11(3)(b), the Tribunal shall invite the Secretary of State and each special advocate to make oral representations.

(7) Where—

- (a) the Tribunal overrules an objection under rule 10(2) or 11(3), or requires him to provide material in a different form from that which he has provided under rule 10(2)(b) or 11(3)(b); and
- (b) the Secretary of State wishes to continue to argue that the certificate should be upheld, he shall not be required to disclose any material which was the subject of his unsuccessful objection if he chooses not to rely on it in advancing that argument.

#### **Amendment and supplementary grounds**

**13.**—(1) With the leave of the Tribunal, the appellant may amend his notice of appeal or deliver supplementary grounds of appeal.

(2) Rule 8(5) applies to an amended notice of appeal and to supplementary grounds of appeal provided under paragraph (1).

(3) With the leave of the Tribunal, the Secretary of State may amend or supplement the material which he has provided under rule 10 or 11.

(4) Where further objections are provided under paragraph (3), the Tribunal shall consider them in accordance with rule 12.

#### **Directions**

**14.**—(1) Subject to any decision which it makes under rule 12 and to the need to secure that information is not disclosed contrary to the public interest, the Tribunal may give directions for the conduct of proceedings.

(2) Directions may—

- (a) provide for a particular matter to be dealt with as a preliminary issue and for a pre-hearing review to be held;
- (b) limit the length of oral submissions and the time allowed for the examination and cross-examination of witnesses;
- (c) require any party to the appeal to give the Tribunal—
  - (i) statements of fact and statements of the evidence which will be called at any hearing, including such statements provided in a modified or edited form;
  - (ii) a skeleton argument which summarises the submissions which will be made and cites all the authorities which will be relied upon, identifying any particular passages to be relied upon;
  - (iii) an estimate of the time which will be needed for any hearing;
  - (iv) a list of the witnesses who will be called to give evidence;

(v) a chronology of events, and to serve any such material on the other parties to the appeal.

(3) The Tribunal may, subject to any provision of this Part which prescribes a particular time limit for the taking of any step, specify time limits for steps to be taken in the proceedings and may extend any time limit so specified.

(4) The power to give directions may be exercised in the absence of the parties.

### **Failure to comply with directions**

**15.**—(1) Where a party fails to comply with a direction, the Tribunal may send him a notice which states—

- (a) the respect in which he has failed to comply with the relevant direction;
- (b) the time limit for complying with the direction; and
- (c) that the Tribunal may proceed to determine the appeal on the material available to it if the party fails to comply with the relevant direction within the time specified.

(2) Where the party fails to comply with the notice under paragraph (1), the Tribunal may proceed in accordance with paragraph (1)(c).

### **Applications**

**16.**—(1) Before the Tribunal notifies any party of—

- (a) any order or direction made or given in the absence of the Secretary of State;
- (b) any summary prepared under rule 21; or
- (c) the Tribunal's determination under rule 22, it shall first notify the Secretary of State.

(2) If the Secretary of State considers that—

- (a) notification of that matter to any party; or
- (b) compliance with an order or direction made or given in his absence, would cause information to be disclosed contrary to the public interest, he may apply to the Tribunal to reconsider the order or direction or to review the proposed summary or determination.

(3) If the Secretary of State makes an application under paragraph (2), he shall as soon as practicable send a copy of it to each special advocate.

(4) An application by the Secretary of State under paragraph (2) shall be made within 14 days of receipt of notification under paragraph (1), and the Tribunal shall not notify any party as mentioned in paragraph (1) before the time for applying has expired.

### **Notification of hearing**

**17.** The clerk to the Tribunal shall notify each special advocate and every party entitled to attend of the date, time and place fixed for any hearing.

### **Exclusion of parties and hearings in private**

**18.**—(1) Where the Tribunal considers it necessary for a party (other than the Secretary of State) and his representative to be excluded from the proceedings or any part of them in order to secure that information is not disclosed contrary to the public interest, it shall—

- (a) direct accordingly; and
- (b) hear the proceedings, or that part of them from which the party and his representative are excluded, in private.

- (2) The Tribunal may hear the proceedings or part of them in private for any other good reason.

### **Evidence**

**19.**—(1) In any proceedings on an appeal, the evidence of witnesses may be given either—

- (a) orally, before the tribunal; or
- (b) in writing, in which case it shall be given in such a manner and at such time as the Tribunal has directed.

(2) The Tribunal may receive evidence in documentary or any other form.

(3) The Tribunal may also receive evidence that would not be admissible in proceedings, before any court, to which the strict rules of evidence apply.

(4) No person shall be compelled to give evidence or produce a document which he could not be compelled to give or produce on the trial of an action in the High Court.

(5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any part of the hearing of the appeal from which he and his representative are not excluded.

(6) The Tribunal may require a witness to give evidence on oath.

### **Summoning of witnesses**

**20.**—(1) Subject to rules 3 and 19(4) and paragraph (2) of this rule, the Tribunal may require any person to attend as a witness at any proceedings before the Tribunal and to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal.

(2) No person shall be required to travel more than 16 kilometres from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.

(3) Where a party requests the attendance of a witness, that party shall pay or tender those expenses.

### **Notification to appellant before determination**

**21.**—(1) Where a party to the appeal and his representative have been excluded from the hearing of the appeal or any part of it, the Tribunal shall, before it makes a determination, give that party a summary of the submissions and evidence received in his absence if and to the extent it is possible to do so without disclosing information contrary to the public interest.

(2) Where the Tribunal provides such a summary, it shall afford the special advocate and the parties an opportunity to make representations and adduce evidence or further evidence to the Tribunal in respect of the material contained in it.

### **Promulgation of determination**

**22.**—(1) The Tribunal shall record its determination and, if and to the extent it is possible to do so without disclosing information contrary to the public interest, the reasons for it.

(2) The Tribunal shall publish its determination and send written notice of it to—

- (a) each special advocate and the parties; and
- (b) where the Secretary of State is not a party, to the Secretary of State.

## PART III

### LEAVE TO APPEAL FROM TRIBUNAL

#### **Application of Part III**

**23.** This Part applies to applications for leave to appeal, on a question of law, to the Court of Appeal in Northern Ireland from a final determination of an appeal by the Tribunal.

#### **Application for leave to appeal**

**24.—(1)** An application to the Tribunal for leave to appeal shall be made within 10 days after the party seeking to appeal, or the Secretary of State where he was not a party to the appeal before the Tribunal, has received written notice of the determination.

(2) The Tribunal may decide an application for leave without a hearing unless it considers there are special circumstances which make a hearing necessary or desirable.

Dated 28th July 1999

*Lord Irvine of Lairg, C.*



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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules prescribe the practice and procedure to be followed on appeals to the tribunal established under section 91 of the Northern Ireland Act 1998 (“the Tribunal”). They include provision for—

- (a) proceedings before the Tribunal to be heard in the absence of a party and his representative;
- (b) the appointment of a special advocate to represent the interests of a party in such proceedings;
- (c) evidence in proceedings before the Tribunal.

The Rules also prescribe the procedure in respect of applications for leave to appeal to the Court of Appeal in Northern Ireland on a point of law from the Tribunal’s determinations.