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STATUTORY RULES OF NORTHERN IRELAND

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**2005 No. 151**

**FAIR EMPLOYMENT**

**The Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005**

*Made* - - - - 22nd March 2005

*Coming into operation* 3rd April 2005

The Department for Employment and Learning<sup>(1)</sup>, in exercise of the powers conferred on it by Articles 81(1) and (2), 82(5) and (7), 84(1), (2), (2A)<sup>(2)</sup>, (2B)<sup>(3)</sup>, (3), (4)<sup>(4)</sup> and (5), 84A<sup>(5)</sup>, 84B(1) and (2)<sup>(6)</sup>, 85A and 85B(1) and (2)<sup>(7)</sup> of the Fair Employment and Treatment (Northern Ireland) Order 1998<sup>(8)</sup>, and now vested in it<sup>(9)</sup>, and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Citation, commencement and revocation**

1.—(1) These Regulations may be cited as the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005 and the Rules of Procedure contained in Schedules 1, 2 and 3 to these Regulations may be referred to, respectively as –

- (a) the Fair Employment Tribunal Rules of Procedure;
- (b) the Fair Employment Tribunal (Appeals) Rules of Procedure; and
- (c) the Fair Employment Tribunal (Enforcement) Rules of Procedure.

(2) These Regulations shall come into operation on 3rd April 2005.

(3) Subject to the savings in regulation 13, the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2004<sup>(10)</sup> are revoked.

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(1) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)  
(2) Article 84(2A) was inserted by S.I. 2003/2902 (N.I. 15), Article 9(1)  
(3) Article 84(2B) was inserted by S.I. 2003/2902 (N.I. 15), Article 10(1)  
(4) Article 84(4) was modified by S.I. 2003/2902 (N.I. 15), Article 11(1)  
(5) Article 84A was inserted by S.I. 2003/2902 (N.I. 15), Article 12  
(6) Article 84B was inserted by S.I. 2003/2902 (N.I. 15), Article 13(1)  
(7) Articles 85A and 85B were inserted by S.I. 2003/2902 (N.I. 15), Article 14(1)  
(8) S.I. 1998/3162 (N.I. 21)  
(9) *See* S.R. 1999 No. 481  
(10) S.R. 2004 No. 164

## Interpretation

### 2.—(1) In these Regulations and in Schedules 1, 2 and 3 –

“the Fair Employment and Treatment Order” means the Fair Employment and Treatment (Northern Ireland) Order 1998;

“the Employment Order” means the Employment (Northern Ireland) Order 2003<sup>(11)</sup>;

“allowances” means any allowances payable under Article 83(2) of the Fair Employment and Treatment Order;

“chairman” means the President, the Vice-President or a member of the panel of chairmen of the Fair Employment Tribunal appointed in accordance with Article 82(1) of the Fair Employment and Treatment Order and referred to in regulation 5(1)(c), and in relation to particular proceedings it means the chairman to whom the proceedings have been referred by the President or the Vice-President;

“claim” means a complaint under the Fair Employment and Treatment Order;

“claimant” means a complainant under the Fair Employment and Treatment Order;

“compromise agreement” means an agreement to refrain from continuing proceedings where the agreement meets the conditions in Article 100(3) of the Fair Employment and Treatment Order;

“decision” includes a default judgement except when referred to in rules 30 to 32 of Schedule 1;

“document exchange” means any document exchange for the time being approved by the Lord Chancellor;

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000<sup>(12)</sup>;

“hearing” means a case management discussion under rule 16, a pre-hearing review under rule 17, a hearing under rule 22 or a review hearing under rule 29 or 32 (in each case as mentioned in Schedule 1) or a sitting of a chairman or a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawful to enable the chairman or tribunal to reach a decision on any question;

“legally represented” has the meaning set out in rule 34(5) of Schedule 1;

“misconceived” includes having no reasonable prospect of success;

“Office of the Tribunals” means the Office of the Industrial Tribunals and the Fair Employment Tribunal;

“old Regulations” means the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2004;

“order” means an order, which may be issued in relation to interim matters, which may require a person to do or not to do something;

“panel of chairmen” means the panel of chairmen of the Fair Employment Tribunal appointed in accordance with Article 82(1) of the Fair Employment and Treatment Order;

“President” means the President of the Industrial Tribunals and the Fair Employment Tribunal or the person nominated by the Lord Chancellor under Article 82(6) of the Fair Employment and Treatment Order to discharge for the time being the functions of the President;

“Register” means the Register of claims, appeals, applications for enforcement, decisions and written reasons kept in accordance with regulation 11;

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

(12) 2000 c. 7

“the relevant authorities” means the persons mentioned in paragraph 5 of Schedule 10 to the Northern Ireland Act 1998;

“rule” means a rule of procedure contained in the Schedules;

“respondent” –

- (a) in relation to a complaint to the Fair Employment Tribunal for Northern Ireland under Article 38 of the Fair Employment and Treatment Order, has the same meaning as in that Article; and
- (b) in relation to proceedings before the Fair Employment Tribunal for Northern Ireland under Articles 16 and 17 of the Fair Employment and Treatment Order, means the person in relation to whom the Commission has made an application under Article 16(1) of that Order or, as the case may require, the person in relation to whom an order has been made under Article 16(3) or (8) of that Order;

“Secretary” means a person for the time being appointed to act as the Secretary of the Office of the Tribunals;

“tribunal” means any tribunal which, by virtue of regulation 4, exercises the jurisdiction of the Fair Employment Tribunal for Northern Ireland, and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President or the Vice-President;

“Vice-President” means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal or the person nominated by the Lord Chancellor under Article 82(6) of the Fair Employment and Treatment Order to discharge for the time being the functions of the Vice-President;

“writing” includes writing delivered by means of electronic communication.

- (2) In these Regulations, in so far as they relate to the rules in Schedule 2, and in that Schedule –

“directions” means directions given by the Commission under Article 12, 13 or 57 of the Fair Employment and Treatment Order or substituted by the Tribunal under Article 15 of that Order;

“party” means the appellant or the Commission;

“respondent” means the Commission.

- (3) In these Regulations, in so far as they relate to the rules in Schedule 3, and in that Schedule –

“application for enforcement” means an application by the Commission under Article 16(1) of the Fair Employment and Treatment Order for enforcement of an undertaking or directions;

“directions” means directions given by the Commission under Articles 12, 13 or 57 of the Fair Employment and Treatment Order or substituted by the Tribunal under Article 15 of that Order and includes –

- (a) directions given by the Commission under section 12, 13, 14, 33 or 34 of the Fair Employment (Northern Ireland) Act 1989 or substituted by the Tribunal under section 15 of that Act; and
- (b) directions given by the Fair Employment Agency for Northern Ireland before the commencement of section 15 of the Fair Employment (Northern Ireland) Act 1989 or substituted by the Fair Employment Appeals Board under section 14 of the Fair Employment (Northern Ireland) Act 1976 for such directions;

“party” means the Commission or the respondent;

“undertaking”, except where rule 15(1)(b)(iii) of Schedule 1 is applied for the purposes of Schedule 3, means an undertaking given to –

- (a) the Commission under Article 12, 13 or 57 of the Fair Employment and Treatment Order;
- (b) the Commission under section 12, 13, 14, 33 or 34 of the Fair Employment (Northern Ireland) Act 1989; or

- (c) the Fair Employment Agency for Northern Ireland under section 13(1) or (5) of the Fair Employment Act 1976 before the commencement of section 12 of the Fair Employment (Northern Ireland) Act 1989.

(4) In these Regulations references to Article 15, 16 or 17 of the Fair Employment and Treatment Order (appeals and legal proceedings in relation to undertakings and directions) include references to those provisions as they are applied for the purposes of Articles 57 and 58 by Article 59 of that Order.

### **Overriding objective**

3.—(1) The overriding objective of these Regulations and the rules in Schedules 1, 2 and 3 is to enable tribunals and chairmen to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable –

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with the case in ways which are proportionate to the complexity or importance of the issues;
- (c) ensuring that it is dealt with expeditiously and fairly; and
- (d) saving expense.

(3) A tribunal or chairman shall seek to give effect to the overriding objective when it or he –

- (a) exercises any power given to it or him by these Regulations or the rules in Schedules 1, 2 and 3; or
- (b) interprets these Regulations or any rule in Schedules 1, 2 and 3.

(4) The parties shall assist the tribunal or the chairman to further the overriding objective.

### **Establishment of Fair Employment Tribunal for Northern Ireland**

4.—(1) There shall continue to be a Tribunal, known as the Fair Employment Tribunal for Northern Ireland, established for the purposes of exercising the jurisdiction conferred on it by or under the Fair Employment and Treatment Order.

(2) The jurisdiction of the Tribunal shall be exercised by a single tribunal or, if the President or the Vice-President so directs, by two or more tribunals.

(3) The President or the Vice-President shall determine at what time and in what place the Tribunal shall sit.

### **Panels of members of the Tribunal**

5.—(1) The Tribunal shall consist of –

- (a) the President;
- (b) the Vice-President;
- (c) the panel of chairmen;
- (d) a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employees as it sees fit; and
- (e) a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employers as it sees fit.

(2) Members of the panel of chairmen shall hold and vacate office under the terms of the instrument under which they are appointed, but may resign their office by notice in writing to the Lord Chancellor, and any such member who ceases to hold office shall be eligible for reappointment.

(3) Members of the panels constituted under paragraph (1)(d) and (e) shall hold and vacate office under the terms of the instrument under which they are appointed but may resign their office by notice in writing to the Department, and any such member who ceases to hold office shall be eligible for reappointment.

### **Composition of tribunals**

6.—(1) For each hearing, the President or the Vice-President shall select a chairman, who shall be the President, the Vice-President or a member of the panel of chairmen, and the President or the Vice-President may select himself.

(2) In any proceedings which are to be determined by a tribunal comprising a chairman and two other members, the President or the Vice-President shall select one of those other members from the panel of persons appointed by the Department under regulation 5(1)(d) and the other from the panel of persons appointed under regulation 5(1)(e).

(3) In any proceedings which are to be determined by a tribunal whose composition is described in paragraph (2), those proceedings may, with the consent of the parties, be heard and determined in the absence of any one member other than the chairman.

(4) In any proceedings which are to be determined by a tribunal whose composition is described in paragraph (2), those proceedings may, with the consent of the parties, be heard and determined by the chairman mentioned in paragraph (1) alone (whether or not the parties have subsequently withdrawn their consent).

(5) The President or the Vice-President may at any time select from the appropriate panel another person in substitution for the chairman or other member of the tribunal previously selected to hear any proceedings before a tribunal or chairman.

(6) Subject to Article 82(6) of the Fair Employment and Treatment Order, the President or the Vice-President may direct that if he is absent or unavailable a person appointed to the panel of chairmen may exercise his functions under regulation 4(2) and (3), paragraphs (2) and (4), Articles 17 and 85 of the Fair Employment and Treatment Order and his power of selection under paragraph (1).

### **Practice directions**

7.—(1) The President may make practice directions about the procedure of tribunals, including practice directions about the exercise by tribunals or chairmen of powers under these Regulations.

(2) The power of the President to make practice directions under paragraph (1) includes power –

- (a) to vary or revoke practice directions;
- (b) to make different provision for different cases, including different provision for specific types of proceedings.

(3) The President shall publish a practice direction made under paragraph (1), and any revocation or variation of it, in such manner as he considers appropriate for bringing it to the attention of the persons to whom it is addressed.

### **Power to prescribe**

8.—(1) The Department may prescribe –

- (a) one or more versions of a form, one of which shall be used by all claimants for the purpose of instituting proceedings in a tribunal (“claim form”) except any claim or proceedings listed in paragraph (3);
- (b) one or more versions of a form, one of which shall be used by all respondents to a claim for the purpose of responding to a claim before a tribunal (“response form”) except respondents to a claim or proceedings listed in paragraph (3); and

- (c) that the provision of certain information and answering of certain questions in a claim form or in a response form is mandatory in all proceedings save those listed in paragraph (3).
- (2) The Department shall publish the forms and matters prescribed pursuant to paragraph (1) in such manner as it considers appropriate in order to bring them to the attention of potential claimants, respondents and their advisers.
- (3) The proceedings referred to in paragraph (1) are –
  - (a) those referred to a tribunal by a court; or
  - (b) proceedings to which Schedule 2 or 3 applies.

### **Calculation of time limits**

**9.—**(1) Any period of time for doing any act required or permitted to be done under any of the rules in Schedules 1, 2 and 3, or under any decision or order of a tribunal or a chairman, shall be calculated in accordance with paragraphs (2) to (6).

(2) Where any act must or may be done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. For example, a respondent is sent a copy of a claim on 1st May. He must present a response to the Office of the Tribunals within 28 days of the date on which he was sent the copy. The last day for presentation of the response is 29th May.

(3) Where any act must or may be done not less than a certain number of days before or after an event, the date of that event shall not be included in the calculation. For example, if a party wishes to submit representations in writing for consideration by a tribunal at a hearing, he must submit them not less than 7 days before the hearing. If the hearing is fixed for 8th May, the representations must be submitted no later than 1st May.

(4) Where the tribunal or a chairman gives any decision or order which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(5) In rule 13(4) of Schedule 1 the requirement to send the notice of hearing to the parties not less than 14 days before the date fixed for the hearing shall not be construed as a requirement for service of the notice to have been effected not less than 14 days before the hearing date, but as a requirement for the notice to have been placed in the post not less than 14 days before that date. For example, a hearing is fixed for 15th May. The last day on which the notice may be placed in the post is 1st May.

(6) Where any act must or may have been done within a certain number of days of a document being sent to a person by the Secretary, the date when the document was sent shall, unless the contrary is proved, be regarded as the date on the letter from the Secretary which accompanied the document. For example, a respondent must present his response to a claim to the Office of the Tribunals within 28 days of the date on which he was sent a copy of the claim. If the letter from the Secretary sending him a copy of the claim is dated 1st May, the last day for presentation of the response is 29th May.

### **Application of Schedules 1-3 to proceedings**

**10.—**(1) The rules in Schedule 1 shall apply in relation to all proceedings before a tribunal except where separate rules of procedure made under the provisions of any statutory provision are applicable.

(2) The rules in Schedules 2 and 3 shall apply to modify the rules in Schedule 1 in relation to proceedings before the tribunal which consist, respectively, of –

- (a) an appeal under Article 15, 62(7) or 63(5) of the Fair Employment and Treatment Order;
- (b) an application for enforcement under Articles 16 and 17 of that Order.

## Register

**11.**—(1) The Secretary shall maintain a Register which shall be open to inspection by any person without charge at all reasonable hours.

(2) The Register shall contain –

- (a) details of all claims in accordance with rule 2(2)(f) of Schedule 1;
- (b) details of appeals in accordance with rule 3(a) of Schedule 2;
- (c) details of applications for enforcement in accordance with rule 3(a) of Schedule 3;
- (d) a copy of all decisions and any written reasons issued by any tribunal or chairman which are required to be entered in the Register in accordance with the rules in Schedules 1 to 3.

(3) The Register, or any part of it, may be kept by means of a computer.

## Proof of decisions of tribunals

**12.** The production in any proceedings in any court of a document purporting to be certified by the Secretary to be a true copy of an entry of a decision in the Register shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

## Transitional provisions

**13.**—(1) These Regulations and Schedules 1 to 3 shall apply in relation to all proceedings where those proceedings were commenced on or after 3rd April 2005.

(2) These Regulations and Schedule 1 (with the exception of rules 1 to 3 and 34 to 42) shall apply to proceedings –

- (a) which were commenced prior to 3rd April 2005; and
- (b) to which Schedule 1 to the old Regulations applied;

provided that a copy of the originating application was not sent to the respondent prior to 3rd April 2005.

(3) In relation to the proceedings described in paragraph (2), the following provisions of Schedule 1 to the old Regulations shall continue to apply –

- (a) rule 1 (originating application);
- (b) rule 2 (action upon receipt of originating application) with the exception of paragraphs (2) and (4) of that rule; and
- (c) rule 12 (costs).

(4) In relation to proceedings described in paragraph (2) but where a copy of the originating application was sent to the respondent prior to 3rd April 2005, Schedule 1 to these Regulations shall apply with the exception of rules 1 to 8, 20, 29 and 34 to 42.

(5) In relation to proceedings described in paragraph (4), the following provisions of Schedule 1 to the old Regulations shall continue to apply –

- (a) rule 1 (originating application);
- (b) rule 2 (action upon receipt of originating application) with the exception of paragraphs (2) and (4) of that rule;
- (c) rule 3 (appearance by respondent); and
- (d) rule 12 (costs).

(6) In relation to proceedings commenced prior to 3rd April 2005 and to which Schedule 2 or 3 to the old Regulations applied, the provisions of those Schedules shall continue to apply to such proceedings.

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Sealed with the Official Seal of the Department for Employment and Learning on 22nd March 2005.

L.S.

*T. Devine*  
A senior officer of the  
Department for Employment and Learning



## SCHEDULE 1

Regulation 10(1)

### FAIR EMPLOYMENT TRIBUNAL RULES OF PROCEDURE

#### *How to bring a claim*

##### **Starting a claim**

1.—(1) A claim shall be brought before a tribunal by the claimant presenting to the Office of the Tribunals the details of the claim in writing. Those details must include all the relevant required information (subject to paragraph (5)).

(2) Subject to paragraph (3), unless it is a claim in proceedings described in regulation 8(3), a claim which is presented on or after 1st October 2005 must be presented on a claim form which has been prescribed by the Department in accordance with regulation 8.

(3) Where a claim described in paragraph (2) has not been presented using the prescribed form but the Secretary is satisfied that –

- (a) the information provided in the claim is substantially the same as the information which would have been provided had the prescribed form been used; and
- (b) the form in which the claim is presented is not calculated to mislead,

that claim shall be taken to have been presented on a claim form prescribed by the Department in accordance with regulation 8.

(4) Subject to paragraph (5), the required information in relation to the claim is –

- (a) each claimant's name;
- (b) each claimant's address;
- (c) the name of each person against whom the claim is made ("the respondent");
- (d) each respondent's address;
- (e) details of the claim;
- (f) whether or not the claimant is or was an employee of the respondent;
- (g) whether or not the claimant has raised the subject matter of the claim with the respondent in writing at least 28 days prior to presenting the claim to the Office of the Tribunals; and
- (h) if the claimant has not done as described in sub-paragraph (g), why he has not done so.

(5) In the following circumstances the required information identified below is not required to be provided in relation to that claim –

- (a) if the claimant is not or was not an employee of the respondent, the information in paragraph (4)(g) and (h) is not required;
- (b) if the claimant was an employee of the respondent and has raised the subject matter of the claim with the respondent as described in paragraph (4)(g), the information in paragraph (4)(h) is not required.

(6) Two or more claimants may present their claims in the same document if their claims arise out of the same set of facts.

(7) When Article 20 of the Employment Order applies to the claim or part of one and a chairman considers in accordance with paragraph (5) of Article 20 that there has been a breach of paragraphs (1) to (3) of that Article, neither a chairman nor a tribunal shall consider the substance of the claim (or the relevant part of it) until such time as those paragraphs have been complied with in relation to the claim or the relevant part of it.

### *Acceptance of claim procedure*

#### **What the tribunal does after receiving the claim**

2.—(1) On receiving the claim the Secretary shall consider whether the claim or part of it should be accepted in accordance with rule 3. If a claim or part of one is not accepted the tribunal shall not proceed to deal with any part which has not been accepted (unless it is accepted at a later date). If no part of a claim is accepted the claim shall not be copied to the respondent.

(2) If the Secretary accepts the claim or part of it, he shall –

- (a) send a copy of the claim to each respondent and record in writing the date on which it was sent;
- (b) inform the parties in writing of the case number of the claim (which must from then on be referred to in all correspondence relating to the claim) and the address to which notices and other communications to the Office of the Tribunals must be sent;
- (c) inform the respondent in writing about how to present a response to the claim, the time limit for doing so, what may happen if a response is not entered within the time limit and that the respondent has a right to receive a copy of any decision disposing of the claim;
- (d) notify the parties that the services of a conciliation officer are available to them;
- (e) if only part of the claim has been accepted, inform the claimant and any respondent which parts of the claim have not been accepted and that the tribunal shall not proceed to deal with those parts unless they are accepted at a later date;
- (f) enter the following details of the claim in the Register –
  - (i) the case number;
  - (ii) the date the Secretary received the claim (on this occasion);
  - (iii) the name of each claimant;
  - (iv) the name of each respondent;
  - (v) the type of claim brought in general terms without reference to detail.

#### **When the claim will not be accepted by the Secretary**

3.—(1) The Secretary shall not accept or register the claim (or a relevant part of it) if it is clear to him that one or more of the following circumstances applies –

- (a) the claim does not include all the relevant required information;
- (b) the tribunal does not have power to consider the claim (or that relevant part of it); or
- (c) Article 20 of the Employment Order (complaints about grievances: Fair Employment Tribunal) applies to the claim or part of it and the claim has been presented to the tribunal in breach of paragraphs (1) to (3) of that Article.

(2) If the Secretary decides not to accept a claim or part of one for any of the reasons in paragraph (1), he shall refer the claim together with a statement of his reasons for not accepting it to a chairman. The chairman shall decide in accordance with the criteria in paragraph (1) whether the claim or part of it should be accepted and allowed to proceed.

(3) If the chairman decides that the claim or part of it should be accepted he shall inform the Secretary in writing and the Secretary shall accept the relevant part of the claim and then proceed to deal with it in accordance with rule 2(2).

(4) If the chairman decides that the claim or part of it should not be accepted he shall record his decision together with the reasons for it in writing in a document signed by him. The Secretary shall

as soon as is reasonably practicable inform the claimant of that decision and the reasons for it in writing together with information on how that decision may be reviewed or appealed.

(5) Where a claim or part of one has been presented to the tribunal in breach of paragraphs (1) to (3) of Article 20 of the Employment Order, the Secretary shall notify the claimant of the time limit which applies to the claim or the part of it concerned and shall inform the claimant of the consequences of not complying with Article 20 of that Order.

(6) Except for the purposes of paragraph (5) and (7) or any appeal, where a chairman has decided that a claim or part of one should not be accepted such a claim (or the relevant part of it) is to be treated as if it had not been received by the Secretary on that occasion.

(7) Any decision by a chairman not to accept a claim or part of one may be reviewed in accordance with rules 30 to 32. If the result of such review is that any parts of the claim should have been accepted, then paragraph (6) shall not apply to the relevant parts of that claim and the Secretary shall then accept such parts and proceed to deal with it in accordance with rule 2(2).

(8) A decision to accept or not to accept a claim or part of one shall not bind any future tribunal or chairman where any of the issues listed in paragraph (1) fall to be determined later in the proceedings.

(9) Except in rule 30 (review of other decisions), all references to a claim in the remainder of these Rules are to be read as references to only the part of the claim which has been accepted.

### *Response*

#### **Responding to the claim**

4.—(1) If the respondent wishes to respond to the claim made against him he must present his response to the Office of the Tribunals within 28 days of the date on which he was sent a copy of the claim. The response must include all the relevant required information. The time limit for the respondent to present his response may be extended in accordance with paragraph (5).

(2) Subject to paragraph (3), unless it is a response in proceedings described in regulation 8(3), any response presented on or after 1st October 2005 must be on a response form prescribed by the Department pursuant to regulation 8.

(3) Where a response described in paragraph (2) has not been presented using the prescribed form but the Secretary is satisfied that –

- (a) the information provided in the response is substantially the same as the information which would have been provided had the prescribed form been used; and
- (b) the form in which the response is presented is not calculated to mislead,

that response shall be taken to have been presented on a response form prescribed by the Department in accordance with regulation 8.

(4) The required information in relation to the response is –

- (a) each respondent's name;
- (b) each respondent's address;
- (c) whether or not the respondent wishes to resist the claim in whole or in part; and
- (d) if the respondent wishes to so resist, on what grounds.

(5) The respondent may apply under rule 10 for an extension of the time limit within which he is to present his response. The application must be presented to the Office of the Tribunals within 28 days of the date on which the respondent was sent a copy of the claim (unless the application is made under rule 29(1)) and must explain why the respondent cannot comply with the time limit. Subject to rule 29, the chairman shall only extend the time within which a response may be presented if he is satisfied that it is just and equitable to do so.

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(6) A single document may include the response to more than one claim if the relief claimed arises out of the same set of facts, provided that in respect of each of the claims to which the single response relates –

- (a) the respondent intends to resist all the claims and the grounds for doing so are the same in relation to each claim; or
- (b) the respondent does not intend to resist any of the claims.

(7) A single document may include the response of more than one respondent to a single claim provided that –

- (a) each respondent intends to resist the claim and the grounds for doing so are the same for each respondent; or
- (b) none of the respondents intends to resist the claim.

#### *Acceptance of response procedure*

#### **What the tribunal does after receiving the response**

5.—(1) On receiving the response the Secretary shall consider whether the response should be accepted in accordance with rule 6. If the response is not accepted it shall be returned to the respondent and (subject to paragraphs (4) and (5) of rule 6) the claim shall be dealt with as if no response to the claim had been presented.

(2) If the Secretary accepts the response he shall send a copy of it to all other parties and record in writing the date on which he does so.

#### **When the response will not be accepted by the Secretary**

6.—(1) The Secretary shall not accept the response if it is clear to him that any of the following circumstances apply –

- (a) the response does not include all the required information (defined in rule 4(4)); or
- (b) the response has not been presented within the relevant time limit.

(2) If the Secretary decides not to accept a response for either of the reasons in paragraph (1), he shall refer the response together with a statement of his reasons for not accepting the response to a chairman. The chairman shall decide in accordance with the criteria in paragraph (1) whether the response should be accepted.

(3) If the chairman decides that the response should be accepted he shall inform the Secretary in writing and the Secretary shall accept the response and then deal with it in accordance with rule 5(2).

(4) If the chairman decides that the response should not be accepted he shall record his decision together with the reasons for it in writing in a document signed by him. The Secretary shall inform both the claimant and the respondent of that decision and the reasons for it. The Secretary shall also inform the respondent of the consequences for the respondent of that decision and how it may be reviewed or appealed.

(5) Any decision by a chairman not to accept a response may be reviewed in accordance with rules 30 to 32. If the result of such a review is that the response should have been accepted, then the Secretary shall accept the response and proceed to deal with the response as described in rule 5(2).

### *Consequences of a response not being presented or accepted*

#### **Default judgements**

7.—(1) In any proceedings if the relevant time limit for presenting a response has passed, a chairman may, in the circumstances listed in paragraph (2), issue a default judgement to determine the claim without a hearing under rule 22 if he considers it appropriate to do so.

(2) Those circumstances are when –

- (a) no response in those proceedings has been presented to the Office of the Tribunals within the relevant time limit;
- (b) a response has been so presented, but a decision has been made not to accept the response either by the Secretary under rule 6(1) or by a chairman under rule 6(2), and the Office of the Tribunals has not received an application under rule 30 to have that decision reviewed; or
- (c) a response has been accepted in those proceedings, but the respondent has stated in the response that he does not intend to resist the claim.

(3) A default judgement may determine liability only or it may determine liability and remedy. If a default judgement determines remedy it shall be such remedy as it appears to the chairman that the claimant is entitled to on the basis of the information before him.

(4) Any default judgement issued by a chairman under this rule shall be recorded in writing and shall be signed by him. The Secretary shall send a copy of that judgement to the parties, to the Agency, and, if the proceedings were referred to the tribunal by a court, to that court. The Secretary shall also inform the parties of their right to have the default judgement reviewed under rule 29. The Secretary shall put a copy of the default judgement on the Register.

(5) The claimant or respondent may apply to have the default judgement reviewed in accordance with rule 29.

(6) If the parties settle the proceedings (either by means of a compromise agreement or through the Agency) before or on the date on which a default judgement in those proceedings is issued, the default judgement shall have no effect.

(7) When paragraph (6) applies, either party may apply under rule 29 to have the default judgement revoked.

#### **Taking no further part in the proceedings**

8. A respondent who has not presented a response to a claim or whose response has not been accepted shall not be entitled to take any part in the proceedings except to –

- (a) make an application under rule 29 (review of default judgements);
- (b) make an application under rule 31 (preliminary consideration of application for review) in respect of rule 30(3)(a), (b) or (e);
- (c) be called as a witness by another person; or
- (d) be sent a copy of a document or corrected entry in accordance with rule 7(4), 25(2) or 33,

and in these Rules the word “party” or “respondent” includes a respondent only in relation to his entitlement to take such a part in the proceedings, and in relation to any such part which he takes.

## *Case management*

### **General power to manage proceedings**

9.—(1) Subject to the following rules, the chairman may at any time either on the application of a party or on his own initiative make an order in relation to any matter which appears to him to be appropriate. Such orders may be any of those listed in paragraph (2) or such other orders as he thinks fit. Subject to the following rules, orders may be issued as a result of a chairman considering the papers before him in the absence of the parties, or at a hearing.

(2) Examples of orders which may be made under paragraph (1) are orders –

- (a) as to the manner in which the proceedings are to be conducted, including any time limit to be observed;
- (b) that a party provide additional information;
- (c) requiring the attendance of any person in Northern Ireland to give evidence and to produce documents or information;
- (d) requiring any person in Northern Ireland to disclose documents or information to a party or to allow a party to inspect such material as might be ordered by a county court;
- (e) extending any time limit, whether or not expired (subject to rules 4(5), 10(2), 21(5), 26(5), 29(1), 31(1), 34(7), 37(5) and 42(9));
- (f) requiring the provision of written answers to questions put by the tribunal or chairman;
- (g) staying the whole or part of any proceedings;
- (h) that part of the proceedings be dealt with separately;
- (i) that different claims be considered together;
- (j) that any person who the chairman or tribunal considers may be liable for the remedy claimed should be made a respondent in the proceedings;
- (k) dismissing the claim against a respondent who is no longer directly interested in the claim;
- (l) postponing or adjourning any hearing;
- (m) varying or revoking other orders;
- (n) giving notice to the parties of a pre-hearing review or a hearing under rule 22;
- (o) giving notice under rule 18;
- (p) giving leave to amend a claim or response;
- (q) that any person who the chairman or tribunal considers has an interest in the outcome of the proceedings may be joined as a party to the proceedings;
- (r) that a witness statement be prepared or exchanged; or
- (s) as to the use of experts or interpreters in the proceedings.

(3) An order may specify the time at or within which and the place at which any act is required to be done. An order may also impose conditions and it shall inform the parties of the potential consequences of non-compliance set out in rule 12.

(4) When a requirement has been imposed under paragraph (1) the person subject to the requirement may make an application under rule 10 (applications in proceedings) for the order to be varied or revoked.

(5) An order described in paragraph (2)(d) which requires a person other than a party to grant discovery or inspection of material may be made only when the discovery sought is necessary in order to dispose fairly of the claim or to save expense.

(6) Any order containing a requirement described in paragraph (2)(c) or (d) shall state that under Article 84(9) and (10) of the Fair Employment and Treatment Order, any person who without reasonable excuse fails to comply with the requirement shall be liable on summary conviction to a fine and, if without reasonable excuse the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine for each day on which the failure continues and the document shall also state the amounts of the current maximum fines.

(7) An order as described in paragraph (2)(i) may be made only if all relevant parties have been given notice that such an order may be made and they have been given the opportunity to make oral or written representations as to why such an order should or should not be made.

(8) Any order made under this rule shall be recorded in writing and signed by the chairman and the Secretary shall inform all parties to the proceedings of any order made as soon as is reasonably practicable.

### **Applications in proceedings**

10.—(1) At any stage of the proceedings a party may apply for an order to be issued, varied or revoked or for a case management discussion or pre-hearing review to be held.

(2) An application for an order must be made not less than 10 days before the date of the hearing at which it is to be considered (if any) unless it is not reasonably practicable to do so, or the chairman or tribunal considers it in the interests of justice that shorter notice be allowed. The application must (unless a chairman orders otherwise) be in writing to the Office of the Tribunals and include the case number for the proceedings and the reasons for the request. If the application is for a case management discussion or a pre-hearing review to be held, it must identify any orders sought.

(3) An application for an order must include an explanation of how the order would assist the tribunal or chairman in dealing with the proceedings efficiently and fairly.

(4) Where a party is legally represented in relation to the application (except where the application is for a witness order described in rule 9(2)(c) only), that party or his representative must, at the same time as the application is sent to the Office of the Tribunals provide all other parties with the following information in writing –

- (a) details of the application and the reasons why it is sought;
- (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 before the date of the hearing (whichever date is the earlier); and
- (c) that any objection to the application must be copied to both the Office of the Tribunals and all other parties,

and the party or his representative must confirm in writing to the Office of the Tribunals that this rule has been complied with.

(5) Where a party is not legally represented in relation to the application, the Secretary shall inform all other parties of the matters listed in paragraph (4)(a) to (c).

(6) A chairman may refuse a party's application and if he does so the Secretary shall inform the parties in writing of such refusal unless the application is refused at a hearing.

### **Chairman acting on his own initiative**

11.—(1) Subject to paragraph (2) and to rules 9(7) and 17(7), a chairman may make an order on his own initiative with or without hearing the parties or giving them an opportunity to make written or oral representations. He may also decide to hold a case management discussion or pre-hearing review on his own initiative.

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(2) Where a chairman makes an order without giving the parties the opportunity to make representations –

- (a) the Secretary must send to the party affected by such order a copy of the order and a statement explaining the right to make an application under sub-paragraph (b); and
- (b) a party affected by the order may apply to have it varied or revoked.

(3) An application under paragraph (2)(b) must (subject to rule 9(2)(e)) be made before the time at which, or the expiry of the period within which, the order was to be complied with. Such an application must (unless a chairman orders otherwise) be made in writing to the Office of the Tribunals and it must include the reasons for the application. Paragraphs (4) and (5) of rule 10 apply in relation to informing the other parties of the application.

### **Compliance with orders and practice directions**

12.—(1) If a party does not comply with an order made under these Rules or a practice direction, a chairman or tribunal –

- (a) may make an order in respect of costs or preparation time under rules 34 to 41; or
- (b) may (subject to paragraph (2) and rule 18) at a pre-hearing review or a hearing under rule 22 make an order to strike out the whole or part of the claim or, as the case may be, the response and, where appropriate, order that a respondent be debarred from responding to the claim altogether.

(2) An order may also provide that unless the order is complied with the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 18 or hold a pre-hearing review or hearing under rule 22.

(3) Chairmen and tribunals shall comply with any practice directions issued under regulation 7.

### *Different types of hearing*

### **Hearings – general**

13.—(1) A chairman or a tribunal (depending on the relevant rule) may hold the following types of hearing –

- (a) a case management discussion under rule 16;
- (b) a pre-hearing review under rule 17;
- (c) a hearing under rule 22; or
- (d) a review hearing under rule 29 or 32.

(2) So far as it appears appropriate to do so, the chairman or tribunal shall seek to avoid formality in his or 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.

(3) The chairman or tribunal (as the case may be) shall make such enquiries of persons appearing before him or it and of witnesses as he or it considers appropriate and shall otherwise conduct the hearing in such manner as he or it considers most appropriate for the clarification of the issues and generally for the just handling of the proceedings.

(4) Unless the parties agree to shorter notice, the Secretary shall send notice of any hearing (other than a case management discussion) to every party not less than 14 days before the date fixed for the hearing and shall inform them that they have the opportunity to submit written representations and to advance oral argument. The Secretary shall give the parties reasonable notice before a case management discussion is held.



(5) If a party wishes to submit written representations for consideration at a hearing (other than a case management discussion) he shall present them to the Office of the Tribunals not less than 7 days before the hearing and shall at the same time send a copy to all other parties.

(6) The tribunal or chairman may, if it or he considers it appropriate, consider representations in writing which have been submitted otherwise than in accordance with paragraph (5).

### **Use of electronic communications**

14.—(1) A hearing (other than those mentioned in sub-paragraphs (c) and (d) of rule 13(1)) may be conducted by use of electronic communications provided that the chairman or tribunal conducting the hearing considers it just and equitable to do so.

(2) Where a hearing is required by these Rules to be held in public and it is to be conducted by use of electronic communications in accordance with this rule then, subject to rule 15, it must be held in a place to which the public has access and using equipment so that the public is able to hear all parties to the communication.

### **Hearings which may be held in private**

15.—(1) A hearing or part of one may be conducted in private for the purposes of –

- (a) hearing evidence which in the opinion of the tribunal or chairman relates to matters of such a nature that it would be against the interests of national security, public safety or public order to allow the evidence to be given in public;
- (b) hearing evidence from any person which in the opinion of the tribunal or chairman is likely to consist of information –
  - (i) which he could not disclose without contravening a prohibition imposed by or under any statutory provision;
  - (ii) which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence placed in him by another person;
  - (iii) 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 Industrial Relations (Northern Ireland) Order 1992<sup>(13)</sup>, cause substantial injury to any undertaking of his or any undertaking in which he works; or
  - (iv) the disclosure of which would create a substantial risk that he or another individual would be subject to physical attack or sectarian harassment.

(2) Where a tribunal or chairman decides to hold a hearing or part of one in private, it or he shall give reasons for doing so.

### *Case management discussions*

### **Conduct of case management discussions**

16.—(1) Case management discussions are interim hearings and may deal with matters of procedure and management of the proceedings and they may be held in private. Case management discussions shall be conducted by a chairman.

(2) Any determination of a person's civil rights or obligations shall not be dealt with in a case management discussion. The matters listed in rule 9(2) are examples of matters which may be dealt with at case management discussions. Orders listed in rule 17(7) may not be made at a case management discussion.

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<sup>(13)</sup> S.I. 1992/807 (N.I. 5)

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### *Pre-hearing reviews*

#### **Conduct of pre-hearing reviews**

17.—(1) Pre-hearing reviews are interim hearings and shall be conducted by a chairman unless the circumstances in paragraph (3) are applicable. Subject to rule 15, they shall take place in public.

(2) At a pre-hearing review the chairman may carry out a preliminary consideration of the proceedings and he may –

- (a) determine any interim or preliminary matter relating to the proceedings;
- (b) issue any order in accordance with rule 9 or do anything else which may be done at a case management discussion;
- (c) order that a deposit be paid in accordance with rule 19 without hearing evidence;
- (d) consider any oral or written representations or evidence.

(3) Pre-hearing reviews shall be conducted by a tribunal composed in accordance with regulation 6 if –

- (a) a party has made a request in writing not less than 10 days before the date on which the pre-hearing review is due to take place that the pre-hearing review be conducted by a tribunal instead of a chairman; and
- (b) a chairman considers that one or more substantive issues of fact are likely to be determined at the pre-hearing review, that it would be desirable for the pre-hearing review to be conducted by a tribunal and he has issued an order that the pre-hearing review be conducted by a tribunal.

(4) If an order is made under paragraph (3), any reference to a chairman in relation to a pre-hearing review shall be read as a reference to a tribunal.

(5) Notwithstanding the preliminary or interim nature of a pre-hearing review, at a pre-hearing review the chairman may make a decision on any preliminary issue of substance relating to the proceedings. Orders made at a pre-hearing review may result in the proceedings being struck out or dismissed or otherwise determined with the result that a hearing under rule 22 is no longer necessary in those proceedings.

(6) Before an order listed in paragraph (7) is made, notice must be given in accordance with rule 18. The orders listed in paragraph (7) may be made at a pre-hearing review or a hearing under rule 22 if one of the parties has so requested. If no such request has been made such orders may be made in the absence of the parties.

(7) Subject to paragraph (6), a chairman or tribunal may make an order –

- (a) as to the entitlement of any party to bring or contest particular proceedings;
- (b) striking out or amending all or part of any claim or response on the grounds that it is scandalous, vexatious or misconceived;
- (c) striking out any claim or response (or part of one) on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (d) striking out a claim which has not been actively pursued;
- (e) striking out a claim or response (or part of one) for non-compliance with an order or practice direction;
- (f) striking out a claim where the chairman or tribunal considers that it is no longer possible to have a fair hearing under rule 22 in those proceedings.

(8) A claim or response or any part of one may be struck out under these Rules only on the grounds stated in paragraph (7)(b) to (f).

(9) If at a pre-hearing review a requirement to pay a deposit under rule 19 has been considered, the chairman who conducted that pre-hearing review shall not be a member of the tribunal at the hearing under rule 22 in relation to those proceedings.

### **Notice requirements**

18.—(1) Before a chairman or a tribunal makes an order described in rule 17(7), except where the order is one described in rule 12(2), the Secretary shall send notice to the party against whom it is proposed that the order should be made. The notice shall inform him of the order to be considered and give him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send such notice to that party if the party has been given an opportunity to give reasons orally to the chairman or the tribunal as to why the order should not be made.

(2) Where a notice required by paragraph (1) is sent in relation to an order to strike out a claim which has not been actively pursued, unless the contrary is proved, the notice shall be treated as if it were received by the addressee if it has been sent to the address specified in the claim as the address to which notices are to be sent (or to any subsequent replacement for that address which has been notified to the Office of the Tribunals).

### *Payment of a deposit*

### **Requirement to pay a deposit in order to continue with proceedings**

19.—(1) At a pre-hearing review if a chairman considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have little reasonable prospect of success, the chairman may make an order against that party requiring the party to pay a deposit of an amount not exceeding £500 as a condition of being permitted to continue to take part in the proceedings relating to that matter.

(2) No order shall be made under this rule unless the chairman has taken reasonable steps to ascertain the ability of the party against whom it is proposed to make the order to comply with such an order, and has taken account of any information so ascertained in determining the amount of the deposit.

(3) An order made under this rule, and the chairman's grounds for making such an order, shall be recorded in a document signed by the chairman. A copy of that document shall be sent to each of the parties and shall be accompanied by a note explaining that if the party against whom the order is made persists in making those contentions relating to the matter to which the order relates, he may have an award of costs or preparation time made against him and could lose his deposit.

(4) If a party against whom an order under this rule has been made does not pay the amount specified in that order to the Secretary either –

- (a) within the period of 21 days of the day on which the document recording the making of the order is sent to him; or
- (b) within such further period, not exceeding 14 days, as the chairman may allow in the light of representations made by that party within the period of 21 days,

a chairman shall strike out the claim or response of that party or, as the case may be, the part of it to which the order relates.

(5) The deposit paid by a party under an order made under this rule shall be refunded to him in full except where rule 41 applies.

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## *Conciliation*

### **Documents to be sent to conciliators**

20. Except where the Secretary and the Agency have agreed otherwise, the Secretary shall send copies of all documents, orders, decisions, written reasons and notices to a conciliation officer of the Agency.

## *Withdrawal of proceedings*

### **Right to withdraw proceedings**

21.—(1) A claimant may withdraw all or part of his claim at any time. This may be done either orally at a hearing or in writing in accordance with paragraph (2).

(2) To withdraw a claim or part of one in writing the claimant must inform the Office of the Tribunals of the claim or the parts of it which are to be withdrawn. Where there is more than one respondent the notification must specify against which respondents the claim is being withdrawn.

(3) The Secretary shall inform all other parties of the withdrawal. Withdrawal takes effect on the date on which the Office of the Tribunals (in the case of written notifications) or the tribunal (in the case of oral notification) receives notice of it. Withdrawal does not affect proceedings as to costs, preparation time or wasted costs.

(4) Where the whole claim is withdrawn, proceedings are brought to an end against the respondent on that date and the tribunal or chairman shall dismiss the proceedings. The proceedings cannot be continued by the claimant (unless the decision to dismiss is successfully reviewed or appealed).

(5) The time limit in paragraph (4) may be extended by a chairman if he considers it just and equitable to do so.

## *The hearing*

### **Hearings**

22.—(1) A hearing under this rule is held for the purpose of determining outstanding procedural or substantive issues or disposing of the proceedings. In any such proceedings there may be more than one hearing and there may be different categories of hearing, such as a hearing on liability, remedies, costs or preparation time.

(2) Any hearing of a claim under this rule shall be heard by a tribunal composed in accordance with regulation 6.

(3) Any hearing of a claim under this rule shall take place in public, subject to rule 15.

### **What happens at the hearing**

23.—(1) The President or the Vice-President shall fix the date, time and place of the hearing under rule 22 and the Secretary shall send to each party a notice of the hearing together with information and guidance as to procedure at the hearing.

(2) Subject to rule 13(2), at the hearing under rule 22 a party shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(3) The tribunal shall require parties and witnesses who attend the hearing under rule 22 to give their evidence on oath or affirmation.

(4) The tribunal may exclude from the hearing under rule 22 any person who is to appear as a witness in the proceedings until such time as they give evidence if it considers it in the interests of justice to do so.

(5) If a party fails to attend or to be represented (for the purpose of conducting the party's case at the hearing under rule 22) at the time and place fixed for such hearing, the tribunal may dismiss or dispose of the proceedings in the absence of that party or may adjourn the hearing to a later date.

(6) If a tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (5), it shall first consider any information in its possession which has been made available to it by the parties.

(7) At a hearing under rule 22 a tribunal may exercise any powers which may be exercised by a chairman under these Rules.

### *Orders, decisions and reasons*

#### **Orders and decisions**

24.—(1) If the parties agree in writing upon the terms of any order or decision a chairman or tribunal may, if he or it thinks fit, make such order or decision.

(2) At the end of a hearing the chairman (or, as the case may be, the tribunal) shall either issue any order or decision orally or shall reserve the decision or order to be given in writing at a later date.

(3) Where a tribunal is composed of three persons any order or decision may be made or issued by a majority; and if a tribunal is composed of two persons only, the chairman has a second or casting vote.

#### **Form and content of decisions**

25.—(1) When a decision is reserved a written decision shall be sent to the parties at a later date. All decisions (whether issued orally or in writing) shall be recorded in writing and signed by the chairman.

(2) The Secretary shall provide a copy of the decision to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court. The Secretary shall include guidance to the parties on how the decision may be reviewed or appealed.

(3) Where the decision includes an award of compensation or a determination that one party is required to pay a sum to another (excluding an order for costs, allowances, preparation time or wasted costs), the document shall also contain a statement of the amount of compensation awarded, or of the sum required to be paid.

#### **Reasons**

26.—(1) A tribunal or chairman must give reasons (either oral or written) for any –

(a) decision; or

(b) order, if a request for reasons is made before or at the hearing at which the order is made.

(2) Reasons may be given orally at the time of issuing the decision or order or they may be reserved to be given in writing at a later date. If reasons are reserved, they shall be signed by the chairman and sent to the parties by the Secretary.

(3) Where oral reasons have been provided, written reasons shall only be provided –

(a) in relation to decisions if requested by one of the parties within the time limit set out in paragraph (5); or

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- (b) in relation to any decision or order if requested by the Court of Appeal at any time.
- (4) When written reasons are provided, the Secretary shall send a copy of the reasons to all parties to the proceedings and record the date on which the reasons were sent. Written reasons shall be signed by the chairman.
- (5) A request for written reasons for a decision must be made by a party either orally at the hearing (if the decision is issued at the hearing), or in writing within 14 days of the date on which the decision was sent to the parties. This time limit may be extended by a chairman where he considers it just and equitable to do so.
- (6) Written reasons for a decision shall include the following information –
  - (a) the issues which the tribunal or chairman has identified as being relevant to the claim;
  - (b) if some identified issues were not determined, what those issues were and why they were not determined;
  - (c) findings of fact relevant to the issues which have been determined;
  - (d) a concise statement of the applicable law;
  - (e) how the relevant findings of fact and applicable law have been applied in order to determine the issues; and
  - (f) where the decision includes an award of compensation or a determination that one party make a payment to the other, a table showing how the amount or sum has been calculated or a description of the manner in which it has been calculated.

#### **Absence of chairman**

27. Where it is not possible for a decision, order or reasons to be signed by the chairman due to death, incapacity or absence –
- (a) if the chairman has dealt with the proceedings alone the document shall be signed by the President or the Vice-President when it is practicable for him to do so; and
  - (b) if the proceedings have been dealt with by a tribunal composed of two or three persons, the document shall be signed by the other person or persons,
- and any person who signs the document shall certify that the chairman is unable to sign.

#### **Entry of decisions and reasons in the Register**

- 28.—(1) The Secretary shall enter a copy of the following documents in the Register –
- (a) any decision (including any order for costs, allowances, preparation time or wasted costs); and
  - (b) any written reasons provided in accordance with rule 26 in relation to any decision.
- (2) Written reasons for decisions shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal or chairman so orders. In such a case the Secretary shall send the reasons to each of the parties and where there are proceedings before a superior court relating to the decision in question, he shall send the reasons to that court, together with a copy of the entry in the Register of the decision to which the reasons relate.

#### *Power to review decisions*

#### **Review of default judgements**

- 29.—(1) A party may apply to have a default judgement against or in favour of him reviewed. An application must be made in writing and presented to the Office of the Tribunals within 14 days

of the date on which the default judgement was sent to the parties. The 14 day time limit may be extended by a chairman if he considers that it is just and equitable to do so.

(2) The application must state the reasons why the default judgement should be varied or revoked. When it is the respondent applying to have the default judgement reviewed, the application must include with it the respondent's proposed response to the claim, an application for an extension of the time limit for presenting the response and an explanation of why paragraphs (1) and (5) of rule 4 were not complied with.

(3) A review of a default judgement shall be conducted by a chairman in public. Notice of the hearing and a copy of the application shall be sent by the Secretary to all other parties.

(4) The chairman may –

- (a) refuse the application for a review;
- (b) vary the default judgement;
- (c) revoke all or part of the default judgement; or
- (d) confirm the default judgement,

and all parties to the proceedings shall be informed by the Secretary in writing of the chairman's decision on the application.

(5) A default judgement must be revoked if the whole of the claim was satisfied before or on the date the judgement was issued or if rule 7(6) applies. A chairman may revoke or vary all or part of a default judgement if the respondent has a reasonable prospect of successfully responding to the claim or part of it.

(6) In considering the application for a review of a default judgement the chairman must have regard to whether there was good reason for the response not having been presented within the applicable time limit.

(7) If the chairman decides that the default judgement should be varied or revoked and that the respondent should be allowed to respond to the claim the Secretary shall accept the response and proceed in accordance with rule 5(2).

### **Review of other decisions**

30.—(1) Parties may apply to have certain decisions made by a tribunal or a chairman reviewed under this rule, and rules 31 and 32. Those decisions are –

- (a) a decision not to accept a claim or a response; and
- (b) a decision which is a final determination of the proceedings or a particular issue in those proceedings (other than a default judgement but including an order for costs, allowances, preparation time or wasted costs).

(2) In relation to a decision not to accept a claim or response, only the party against whom the decision is made may apply to have the decision reviewed.

(3) Subject to paragraph (4), decisions may be reviewed on the following grounds only –

- (a) the decision was wrongly made as a result of an administrative error;
- (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 conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time; or
- (e) the interests of justice require such a review.

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(4) A decision not to accept a claim or response may only be reviewed on the grounds listed in paragraph (3)(a) and (e).

(5) A tribunal or chairman may on its or his own initiative review a decision made by it or him on the grounds listed in paragraph (3) or (4).

(6) In this rule, rules 31 and 32, “decision” means a decision mentioned in paragraph (1).

### **Preliminary consideration of application for review**

31.—(1) An application under rule 30 to have a decision reviewed must be made to the Office of the Tribunals within 14 days of the date on which the decision was sent to the parties. The 14 day time limit may be extended by a chairman if he considers that it is just and equitable to do so.

(2) The application must be in writing and must identify the grounds of the application in accordance with rule 30(3), but if the decision to be reviewed was made at a hearing, an application may be made orally at that hearing.

(3) The application to have a decision reviewed shall be considered (without the need to hold a hearing) by the chairman of the tribunal which made the decision or, if that is not practicable, by –

- (a) any chairman nominated by the President or the Vice-President; or
- (b) the President or the Vice-President,

and that person shall refuse the application if he considers that there are no grounds for the decision to be reviewed under rule 30(3) or there is no reasonable prospect of the decision being varied or revoked.

(4) If an application for a review is refused after such preliminary consideration the Secretary shall inform the party making the application in writing of the chairman’s decision and his reasons for it. If the application for a review is not refused the decision shall be reviewed under rule 32.

### **The review**

32.—(1) Where a party has applied for a review and the application has not been refused after the preliminary consideration mentioned in rule 31, the decision shall be reviewed by the chairman or tribunal who made the original decision. If that is not practicable a different chairman or tribunal (as the case may be) shall be appointed by the President or the Vice-President.

(2) Where no application has been made by a party and the decision is being reviewed on the initiative of the tribunal or chairman, the review must be carried out by the same tribunal or chairman who made the original decision and –

- (a) a notice must be sent to each of the parties explaining in summary the grounds upon which it is proposed to review the decision and giving them an opportunity to give reasons why there should be no review; and
- (b) such notice must be sent before the expiry of 14 days from the date on which the original decision was sent to the parties.

(3) A tribunal or chairman who reviews a decision under paragraph (1) or (2) may confirm, vary or revoke the decision. If the decision is revoked, the tribunal or chairman must order the decision to be taken again. When an order is made that the original decision be taken again, if the original decision was taken by a chairman without a hearing, the new decision may be taken without hearing the parties and if the original decision was taken at a hearing a new hearing must be held.



### **Correction of orders, decisions or reasons**

33.—(1) Clerical mistakes in any order, decision or reasons, or errors arising in those documents from an accidental slip or omission, may at any time be corrected by certificate by the chairman, the President or the Vice-President.

(2) If a document is corrected by certificate under paragraph (1), or if a decision is revoked or varied under rule 29 or 32 or altered in any way by order of a superior court, the Secretary shall alter any entry in the Register which is so affected to conform with the certificate or order and send a copy of any entry so altered to each of the parties and, if the proceedings have been referred to the tribunal by a court, to that court.

(3) Where a document omitted from the Register under rule 28 is corrected by certificate under this rule, the Secretary shall send a copy of the corrected document to the parties; and where there are proceedings before any superior court relating to the decision or reasons in question, he shall send a copy to that court together with a copy of the entry in the Register of the decision, if it has been altered under this rule.

### *Costs orders*

### **General powers to make costs orders**

34.—(1) Subject to paragraph (2) and in the circumstances listed in rules 35 and 41 a tribunal or chairman may make an order (“a costs order”) that –

- (a) a party (“the paying party”) make a payment in respect of the costs incurred by another party (“the receiving party”);
- (b) the paying party pay to the Department, in whole or in part, any allowances paid by the Department to any person for the purposes of, or in connection with, that person’s attendance at the tribunal.

(2) A costs order may be made under rules 35 and 41 only where the receiving party has been legally represented at the hearing under rule 22 or, in proceedings which are determined without such hearing, if the receiving party is legally represented when the proceedings are determined. If the receiving party has not been so legally represented a tribunal or chairman may make a preparation time order (subject to rules 37 to 39). (See rule 40 on the restriction on making a costs order and a preparation time order in the same proceedings.)

(3) For the purposes of these Rules “costs” shall mean fees, charges or disbursements incurred by or on behalf of a party in relation to the proceedings.

(4) A costs order may be made against or in favour of a respondent who has not had a response accepted in the proceedings in relation to the conduct of any part which he has taken in the proceedings.

(5) In these Rules “legally represented” means having the assistance of a person (including where that person is the receiving party’s employee) who –

- (a) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(14)</sup>;
- (b) is an advocate or solicitor in Scotland; or
- (c) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.

(6) Any costs order made under rules 35 or 41 shall be payable by the paying party and not his representative.

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(14) 1990 c. 41

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(7) A party may apply for a costs order to be made at any time during the proceedings. An application may be made at the end of a hearing, or in writing to the Office of the Tribunals. An application for costs which is received by the Office of the Tribunals later than 28 days from the issuing of the decision determining the claim shall not be accepted or considered by a tribunal or chairman unless it or he considers that it is in the interests of justice to do so.

(8) In paragraph (7), the date of issuing of the decision determining the claim shall be either –

- (a) the date of the hearing under rule 22 if the decision was issued orally; or
- (b) if the decision was reserved, the date on which the written decision was sent to the parties.

(9) No costs order shall be made unless the Secretary has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send notice to that party if the party has been given an opportunity to give reasons orally to the chairman or tribunal as to why the order should not be made.

(10) Where a tribunal or chairman makes a costs order it or he shall provide written reasons for doing so if a request for written reasons is made within 14 days of the date of the costs order. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

#### **When a costs order may be made**

35.—(1) A tribunal or chairman may make a costs order when on the application of a party it or he has postponed the day or time fixed for or adjourned a hearing under rule 22 or pre-hearing review. The costs order may be against or, as the case may require, in favour of that party as respects any costs incurred or any allowances paid as a result of the postponement or adjournment.

(2) A tribunal or chairman shall consider making a costs order against a paying party where, in the opinion of the tribunal or chairman (as the case may be), any of the circumstances in paragraph (3) apply. Having so considered, the tribunal or chairman may make a costs order against the paying party if it or he considers it appropriate to do so.

(3) The circumstances referred to in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying party has been misconceived.

(4) A tribunal or chairman may make a costs order against a party who has not complied with an order or practice direction.

#### **The amount of a costs order**

36.—(1) The amount of a costs order against the paying party shall be determined in any of the following ways:

- (a) the tribunal may specify the sum which the paying party must pay to the receiving party, provided that sum does not exceed £10,000;
- (b) the parties may agree on a sum to be paid by the paying party to the receiving party and if they do so the costs order shall be for the sum so agreed;
- (c) the tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party with the amount to be paid being determined by way of detailed assessment in a county court 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.

(2) The tribunal or chairman may have regard to the paying party's ability to pay when considering whether it or he shall make a costs order or how much that order should be.

(3) For the avoidance of doubt, the amount of a costs order made under paragraph (1)(b) or (c) may exceed £10,000.

### *Preparation time orders*

#### **General power to make preparation time orders**

37.—(1) Subject to paragraph (2) and in the circumstances described in rules 38 and 41 a tribunal or chairman may make an order (“a preparation time order”) that a party (“the paying party”) make a payment in respect of the preparation time of another party (“the receiving party”).

(2) A preparation time order may be made under rules 38 or 41 only where the receiving party has not been legally represented at a hearing under rule 22 or, in proceedings which are determined without such hearing, if the receiving party has not been legally represented when the proceedings are determined. (See: rules 34 to 36 on when a costs order may be made; rule 34(5) for the definition of legally represented; and rule 40 on the restriction on making a costs order and a preparation time order in the same proceedings.)

(3) For the purposes of these Rules preparation time shall mean time spent by –

(a) the receiving party or his employees carrying out preparatory work directly relating to the proceedings; and

(b) the receiving party’s legal or other advisers relating to the conduct of the proceedings, up to but not including time spent at any hearing under rule 22.

(4) A preparation time order may be made against a respondent who has not had a response accepted in the proceedings in relation to the conduct of any part which he has taken in the proceedings.

(5) A party may apply to the tribunal for a preparation time order to be made at any time during the proceedings. An application may be made at the end of a hearing or in writing to the Secretary. An application for preparation time which is received by the Office of the Tribunals later than 28 days from the issuing of the decision determining the claim shall not be accepted or considered by a tribunal or chairman unless it or he considers that it is in the interests of justice to do so.

(6) In paragraph (5) the date of issuing of the decision determining the claim shall be either –

(a) the date of the hearing under rule 22 if the decision was issued orally; or

(b) if the decision was reserved, the date on which the written decision was sent to the parties.

(7) No preparation time order shall be made unless the Secretary has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send notice to that party if the party has been given an opportunity to give reasons orally to the chairman or tribunal as to why the order should not be made.

(8) Where a tribunal or chairman makes a preparation time order it or he shall provide written reasons for doing so if a request for written reasons is made within 14 days of the date of the preparation time order. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

#### **When a preparation time order may be made**

38.—(1) A tribunal or chairman may make a preparation time order when on the application of a party it or he has postponed the day or time fixed for or adjourned a hearing under rule 22 or a pre-hearing review. The preparation time order may be against or, as the case may require, in favour of that party as respects any preparation time spent as a result of the postponement or adjournment.

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(2) A tribunal or chairman shall consider making a preparation time order against a party (the paying party) where, in the opinion of the tribunal or the chairman (as the case may be), any of the circumstances in paragraph (3) apply. Having so considered the tribunal or chairman may make a preparation time order against that party if it or he considers it appropriate to do so.

(3) The circumstances described in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying party has been misconceived.

(4) A tribunal or chairman may make a preparation time order against a party who has not complied with an order or practice direction.

### **Calculation of a preparation time order**

39.—(1) In order to calculate the amount of preparation time the tribunal or chairman shall make an assessment of the number of hours spent on preparation time on the basis of –

- (a) information on time spent provided by the receiving party; and
- (b) the tribunal or chairman's own assessment of what it or he considers to be a reasonable and proportionate amount of time to spend on such preparatory work and with reference to, for example, matters such as the complexity of the proceedings, the number of witnesses and documentation required.

(2) Once the tribunal or chairman has assessed the number of hours spent on preparation time in accordance with paragraph (1), it or he shall calculate the amount of the award to be paid to the receiving party by applying an hourly rate of £25·00 to that figure (or such other figure calculated in accordance with paragraph (4)). No preparation time order made under these Rules may exceed the sum of £10,000.

(3) The tribunal or chairman may have regard to the paying party's ability to pay when considering whether it or he shall make a preparation time order or how much that order should be.

(4) For the year commencing on 6th April 2006, the hourly rate of £25·00 shall be increased by the sum of £1·00 and for each subsequent year commencing on 6th April, the hourly rate for the previous year shall also be increased by the sum of £1·00.

### **Restriction on making costs orders and preparation time orders**

40.—(1) A tribunal or chairman may not make a preparation time order and a costs order in favour of the same party in the same proceedings. However where a preparation time order is made in favour of a party in proceedings, the tribunal or chairman may make a costs order in favour of another party or in favour of the Department under rule 34(1)(b) in the same proceedings.

(2) If a tribunal or a chairman wishes to make either a costs order or a preparation time order in proceedings, before the claim has been determined, it or he may make an order that either costs or preparation time be awarded to the receiving party. In such circumstances a tribunal or chairman may decide whether the award should be for costs or preparation time after the proceedings have been determined.

### **Costs or preparation time orders when a deposit has been taken**

41.—(1) Where –

- (a) a party has been ordered under rule 19 to pay a deposit as a condition of being permitted to continue to participate in proceedings relating to a matter;
- (b) in respect of that matter, the tribunal or chairman has found against that party in its or his decision; and

- (c) no award of costs or preparation time has been made against that party arising out of the proceedings on the matter,

the tribunal or chairman shall consider whether to make a costs or preparation time order against that party on the ground that the party conducted the proceedings relating to the matter unreasonably in persisting in having the matter determined; but the tribunal or chairman shall not make a costs or preparation time order on that ground unless it or he has considered the document recording the order under rule 19 and is of the opinion that the grounds which caused the tribunal or chairman to find against the party in its decision were substantially the same as the grounds recorded in that document for considering that the contentions of the party had little reasonable prospect of success.

(2) Where a costs or preparation time order is made against a party who has had an order under rule 19 made against him (whether the award arises out of the proceedings relating to the matter in respect of which the order was made or out of proceedings relating to any other matter considered with that matter), his deposit shall be paid in part or full settlement of the costs or preparation time order –

- (a) where an order is made in favour of one party, to that party; and
- (b) where orders are made in favour of more than one party, to all of them or any one or more of them as the tribunal or chairman thinks fit, and if to all or more than one, in such proportions as the tribunal or chairman considers appropriate,

and if the amount of the deposit exceeds the amount of the costs or preparation time order, the balance shall be refunded to the party who paid it.

#### *Wasted costs orders against representatives*

#### **Personal liability of representatives for costs**

42.—(1) A tribunal or chairman may make a wasted costs order against a party's representative.

(2) In a wasted costs order the tribunal or chairman may –

- (a) disallow, or order the representative of a party to meet, the whole or part of any wasted costs of any party (including an order that the representative repay to his client any costs which have already been paid); and
- (b) order the representative to pay to the Department, in whole or in part, any allowances paid by the Department to any person for the purposes of, or in connection with, that person's attendance at the tribunal by reason of the representative's conduct of the proceedings.

(3) "Wasted costs" means any costs incurred by a party –

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the tribunal or chairman considers it unreasonable to expect that party to pay.

(4) In this rule "representative" means a party's legal or other representative or any employee of such representative, but it does not include a representative who is not acting in pursuit of profit with regard to those proceedings.

(5) A wasted costs order may be made in favour of a party whether or not that party is legally represented and such an order may also be made in favour of a representative's own client. A wasted costs order may not be made against a representative where that representative is an employee of a party.

(6) Before making a wasted costs order, the tribunal or chairman shall give the representative a reasonable opportunity to make oral or written representations as to reasons why such an order

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should not be made. The tribunal or chairman may also have regard to the representative's ability to pay when considering whether to make a wasted costs order or how much that order should be.

(7) Where a tribunal or chairman makes a wasted costs order, it or he must specify in the order the amount to be disallowed or paid.

(8) The Secretary shall inform the representative's client in writing –

- (a) of any proceedings under this rule; or
- (b) of any order made under this rule against the party's representative.

(9) Where a tribunal or chairman makes a wasted costs order it or he shall provide written reasons for doing so if a request is made for written reasons within 14 days of the date of the wasted costs order. This 14 day time limit may not be extended under rule 9. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

### *Powers in relation to specific types of proceedings*

#### **Devolution issues**

43.—(1) In any proceedings in which a devolution issue within the meaning of paragraph 1 of Schedule 10 to the Northern Ireland Act 1998<sup>(15)</sup> arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless they are 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 claim and the response.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receiving it, 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.

#### **References to the European Court of Justice**

44. Where a tribunal or chairman makes an order referring a question to the European Court of Justice for a preliminary ruling under Article 234 of the Treaty establishing the European Community, the Secretary shall send a copy of the order to the Registrar of that Court.

#### **Transfer of proceedings from a court**

45. Where proceedings are referred to a tribunal by a court, these Rules shall apply to them as if the proceedings had been sent to the Secretary by the claimant.

### *General provisions*

#### **Powers**

46.—(1) Subject to the provisions of these Rules and any practice directions, a tribunal or chairman may regulate its or his own procedure.

(2) At a hearing under rule 22 or a pre-hearing review held in accordance with rule 17(3) a tribunal may make any order which a chairman has power to make under these Rules, subject to compliance with any relevant notice or other procedural requirements.

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(15) 1998 c. 47

(3) Any function of the Secretary may be performed by a person acting with the authority of the Secretary.

**Notices, etc.**

47.—(1) Any notice given or document sent under these Rules shall (unless a chairman or tribunal orders otherwise) be in writing and may be given or sent –

- (a) by post;
- (b) by fax or other means of electronic communication;
- (c) through a document exchange in accordance with paragraph (6); or
- (d) by personal delivery.

(2) Where a notice or document has been given or sent in accordance with paragraph (1), that notice or document shall, unless the contrary is proved, be taken to have been received by the party to whom it is addressed –

- (a) in the case of a notice or document given or sent by post, on the day on which the notice or document would be delivered in the ordinary course of post;
- (b) in the case of a notice or document transmitted by fax or other means of electronic communication, on the day on which the notice or document is transmitted;
- (c) in the case of a notice or document which is left at a document exchange in accordance with paragraph (6), on the second business day following the day on which it is left; and
- (d) in the case of a notice or document delivered in person, on the day on which the notice or document is delivered.

(3) All notices and documents required by these Rules to be presented to the Secretary or the Office of the Tribunals, other than a claim, shall be presented at the Office of the Tribunals or such other office as notified by the Secretary to the parties.

(4) All notices and documents required or authorised by these Rules to be sent or given to any person listed below may be sent to or delivered at –

- (a) in the case of any 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 under rule 43, the Attorney General's Chambers, 9 Buckingham Gate, London, SW1E 7JP;
- (c) in the case of a notice or document directed to a court, the office of the clerk of the court;
- (d) in the case of a notice or document directed to a party –
  - (i) the address specified in the claim or response to which notices and documents are to be sent, or in a notice under paragraph (5); 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;
- (e) in the case of a notice or 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 the person is a corporate body, the body's registered or principal office in the United Kingdom;

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and a notice or document sent or given to the authorised representative of a party shall be taken to have been sent or given to that party.

(5) A party may at any time by notice to the Office of the Tribunals and to the other party or parties (and, where appropriate, to the appropriate conciliation officer) change the address to which notices and documents are to be sent or transmitted.

(6) 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.

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

(8) Copies of every document sent to the parties under rule 25, 26 or 28 shall be sent to the Commission.

## SCHEDULE 2

Regulation 10(2)(a)

### FAIR EMPLOYMENT TRIBUNAL (APPEALS) RULES OF PROCEDURE *For use only in proceedings on an appeal against a direction or notice of refusal*

#### Application of Schedule 1

1.—(1) Subject to rules 5 and 6, Schedule 1 shall apply to appeals –

- (a) against a direction as referred to in Article 15 of the Fair Employment and Treatment Order; and
- (b) against a notice of refusal as referred to in Article 62(7) or 63(5) of the Fair Employment and Treatment Order,

and the rules in this Schedule modify the rules in Schedule 1 in relation to such appeals.

(2) The rules in this Schedule modify the rules in Schedule 1 in relation to the appeals described in paragraphs (1)(a) and (b). If there is conflict between the rules contained in this Schedule and those in Schedule 1, the rules in this Schedule shall prevail.

#### Notice of appeal

2. A person wishing to appeal against a direction or notice of refusal as described in rule 1 (the appellant) shall do so by sending to the Office of the Tribunals a notice of appeal which must be in writing and must include the following –

- (a) the name and address of the appellant and, if different, an address to which he requires notices and documents relating to the appeal to be sent;
- (b) the date of the notice containing the directions appealed against;



- (c) the name and address of the respondent;
- (d) details of the requirements which are being appealed; and
- (e) the grounds for the appeal.

#### **Action on receipt of appeal**

3. On receiving the 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 of the appellant;
    - (iv) the name of the respondent;
    - (v) the fact that the appeal is an appeal against a direction under Article 15 or notice of refusal under Article 62(7) or 63(5) of the Fair Employment and Treatment Order;
  - (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 (which must from then on be referred to in all correspondence relating to the appeal) and of the address to which notices and other communications to the Office of the Tribunals shall be sent.

#### **Withdrawal of appeal**

4. If the appellant at any time gives notice of the withdrawal of his appeal in accordance with rule 21 of Schedule 1, the tribunal or chairman shall consider making a costs order under rule 35 in relation to the withdrawal.

#### **Provisions of Schedule 1 which do not apply to appeals against a direction or notice of refusal**

5. The following rules in Schedule 1 shall not apply in relation to appeals against a direction or notice of refusal: rules 1 to 8, 15(1)(c), 17(2)(c), 19, 29, 30(1)(a), 30(2), 30(4), 34(4), 37(4), 41 and 47(8). All references in Schedule 1 to the rules listed in this rule shall have no effect in relation to an appeal against a direction or notice of refusal.

#### **Modification of Schedule 1**

6. Schedule 1 shall be further modified so that all references in Schedule 1 to a claim shall be read as references to a notice of an appeal of the kind described in rule 1(a) or 1(b), as the context may require, and all references to the claimant shall be read as references to the appellant in such an appeal.

## SCHEDULE 3

Regulation 10(2)(b)

### FAIR EMPLOYMENT TRIBUNAL (ENFORCEMENT) RULES OF PROCEDURE

*For use only in proceedings on an application for enforcement*

#### **Application of Schedule 1**

1. Subject to Articles 16(4)(c) and 17 of the Fair Employment and Treatment Order, Schedule 1 shall apply to appeals against an application for enforcement. The rules in this Schedule modify the rules in Schedule 1 in relation to such applications. If there is conflict between the rules contained in this Schedule and those in Schedule 1, the rules in this Schedule shall prevail.

#### **Notice of application**

2. An application for enforcement shall be made by the applicant sending to the Office of the Tribunals a notice of application for enforcement which must include the following –

- (a) the name and address of the applicant and, if different, an address to which notices and documents relating to the application are to be sent;
- (b) the name and address of the respondent;
- (c) details (including the date and particulars) of the undertaking or directions to which the application relates; and
- (d) the grounds for the application.

#### **Action on receipt of application**

3. On receiving the notice of application the Secretary shall –

- (a) enter the following details of the application in the Register, namely –
  - (i) the case number;
  - (ii) the date the Secretary received the relevant documents;
  - (iii) the name of the applicant;
  - (iv) the name of the respondent;
- (b) send a copy of the notice of application to the respondent; and
- (c) inform the parties in writing of the case number of the application (which must from then on be referred to in all correspondence relating to the application) and of the address to which notices and other communications to the Office of the Tribunals shall be sent.

#### **Application to enforce, revoke or vary an order**

4. In rule 10 of Schedule 1, an application for an order may include an application –

- (a) under Article 16(7)(b) of the Fair Employment and Treatment Order for the enforcement of an order under Article 16(3)(a) of that Order; and
- (b) under Article 16(8)(a) of the Fair Employment and Treatment Order for the revocation or variation of the terms of an order under Article 16(3) of that Order.

#### **Withdrawal of application**

5. If the Commission at any time gives notice of the withdrawal of its application in accordance with rule 21 of Schedule 1, the tribunal or chairman shall consider making a costs order under rule 35 in relation to the withdrawal.

### **Provisions of Schedule 1 which do not apply to applications for enforcement**

6. The following rules in Schedule 1 shall not apply in relation to applications for enforcement: rules 1 to 8, 15(1)(c), 17(2)(c), 19, 29, 30(1)(a), 30(2), 30(4), 34(4), 37(4), 41 and 47(8). All references in Schedule 1 to the rules listed in this rule shall have no effect in relation to an application for enforcement.

### **Modification of Schedule 1**

7. Schedule 1 shall be further modified so that all references in Schedule 1 to a claim shall be read as references to a notice of an application for enforcement, as the context may require, and all references to the claimant shall be read as references to the Commission in such an application.

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## **EXPLANATORY NOTE**

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

These Regulations revoke and replace the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2004. They have been drafted in simpler language and have been re-numbered and re-ordered. In addition to minor and drafting amendments and the updating of statutory and other references, these Regulations make the following changes of substance.

Regulation 7 gives the President power to make practice directions.

Regulation 8 empowers the Department for Employment and Learning to prescribe forms which are to be used by claimants and respondents in proceedings before the Fair Employment Tribunal for Northern Ireland. The prescribed forms do not have to be used in relation to the proceedings listed in regulation 8(3).

Regulation 9 specifies the manner in which the time limits described in the Schedules to the Regulations are to be interpreted.

Regulation 10 provides that Schedule 1 to the Regulations is to apply to all proceedings before the Fair Employment Tribunal. However Schedule 1 is modified by Schedules 2 and 3 in relation to proceedings to which each of those Schedules apply respectively.

Regulation 11 provides that details of claims, appeals, applications and any decisions and their associated written reasons are to be entered on the public register.

Regulation 15 makes transitional provision in relation to proceedings which were commenced prior to 3rd April 2005. The Regulations apply to all proceedings commenced on or after that date.

Schedule 1 to the Regulations introduces some new terminology such as “claim”, “claimant”, “response”, “case management discussion” and “default judgement”.

Rules 1 to 3 of Schedule 1 provide that, from 1st October 2005, a claim should be presented using a prescribed form. The provision of certain information (“the required information”) is mandatory if the claim is to be accepted and allowed to proceed. Much of the required information is designed to establish whether the statutory disciplinary and grievance procedures under the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004 are applicable and have been followed.

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Rule 4 of Schedule 1 provides that the respondent has 28 days from the date on which he was sent the claim in order to present his response. That time limit may be extended if an application to do so is made before the time limit has expired. As from 1st October 2005 a response should be presented using a prescribed form.

Rule 6 of Schedule 1 provides that the response will not be accepted if the required information in relation to it has not been provided.

Rule 7 of Schedule 1 introduces default judgments where no response has been accepted in proceedings and the time limit for entering the response has expired.

Rules 9 to 12 of Schedule 1 describe the tribunal's case management powers and the procedure for making applications in proceedings.

Rules 13 to 18 of Schedule 1 describe the different types of hearing which may be held, how such hearings are to be conducted and the orders which may be made at different types of hearings.

Rule 21 of Schedule 1 establishes the procedure to be followed in order to withdraw a claim.

Rule 22 of Schedule 1 describes a hearing held to determine an outstanding procedural or substantive issue or dispose of the proceedings.

Rule 24 of Schedule 1 describes when orders and decisions may be made. Rule 25 specifies the matters which are to be included in a decision. Rule 26 sets out the circumstances in which it is possible to obtain reasons for a decision.

Rules 29 to 32 of Schedule 1 establish new procedures for reviewing certain decisions made by a tribunal or chairman.

Rules 34 to 36 of Schedule 1 describe the circumstances in which a costs order may be made. Such an order may only be made if the party in favour of whom it is made has been legally represented at the relevant time. The relevant time will generally be at the hearing under rule 22. The ability of the paying party to pay the costs order may also be taken into account by the tribunal or chairman.

Rules 37 to 39 of Schedule 1 describe the circumstances in which a preparation time order may be made. A preparation time order may only be made if the party in favour of whom it is made has not been legally represented at the relevant time. The relevant time will generally be at the hearing under rule 22. The ability of the paying party to pay the preparation time order may be taken into account by the tribunal or chairman. Rule 39 sets out how the amount of a preparation time order is calculated.

Rule 40 of Schedule 1 provides that a tribunal or chairman may not make a preparation time order and a costs order in favour of the same party in the same proceedings.

Rule 42 of Schedule 1 introduces wasted costs orders which may be made against representatives. The orders may not however be made against representatives who are not acting in pursuit of profit in relation to those proceedings.

Schedule 2 modifies the application of Schedule 1 in relation to appeals against directions issued by the Equality Commission for Northern Ireland and appeals against a refusal by the Commission to cancel a notice of non-qualification for public contracts or financial assistance from a Northern Ireland department.

Schedule 3 modifies the application of Schedule 1 in relation to applications by the Equality Commission for enforcement of undertakings to promote equality of opportunity or directions issued by the Commission requiring action to be taken for this purpose. Schedule 3 also applies to proceedings before the Fair Employment Tribunal to enforce, revoke or vary an order of the Tribunal made in relation to such an application for enforcement.

A Regulatory Impact Assessment in respect of these Regulations is available and a copy can be obtained from the Department for Employment and Learning, 39-49 Adelaide Street, Belfast BT2 8FD. A copy has also been placed in the library of the Northern Ireland Assembly.

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