

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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(1), 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.

(1) 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(2);
- (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.

(2) 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⁽³⁾ 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.

(3) 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.