

2005 No. 578

EMPLOYMENT

**The Industrial Tribunals (Constitution and Rules of Procedure)
(Amendment) (No. 2) Regulations (Northern Ireland) 2005**

Made - - - - - *20th December 2005*

Coming into operation - - - - - *31st December 2005*

The Department for Employment and Learning(a), in exercise of the powers conferred on it by Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978(b) and Articles 3(1), 6(6A)(b)(c), 9(1), (2) and (3)(d) and (e), 11(1)(d) and (4)(e), 12(6)(f), 13(1), 14(2) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(g), and now vested in it(h), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) (No. 2) Regulations (Northern Ireland) 2005 and shall come into operation on 31st December 2005.

(2) In these Regulations “the principal Regulations” means the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005(i) and any reference to a rule in a Schedule is a reference to a rule in that Schedule to the principal Regulations.

Amendments to the principal Regulations

2.—(1) In regulation 1(1)(a), (b), (c), (d), (e) and (f) of the principal Regulations, after “Procedure” insert “2005”.

(2) In regulation 11 of the principal Regulations, after paragraph (6), insert—

“(7) Where any act must or may be done within a certain period ending upon a Sunday or a public holiday, that period ends on the first day following that is not a Sunday or a public holiday.”.

Amendments to the Schedules to the principal Regulations

3.—(1) In Schedule 1—

(a) Formerly the Department of Higher and Further Education, Training and Employment; See 2001 c. 15 (N.I.)
(b) S.I. 1978/1039 (N.I. 9); Article 26 was modified by S.I. 1984/1159 (N.I. 9), Schedule 4; its interpretation was modified by S.R. 2000 No. 87, regulation 2; S.R. 2000 No. 120, regulation 19; and 2002 c. 8 (N.I.), s. 1
(c) Paragraph (6A) was inserted by S.I. 1998/1265 (N.I. 8), Article 4(5)
(d) Article 11(1)(a) was amended by S.I. 2003/2902 (N.I. 15), Article 7(2)
(e) Article 11(4) was amended by S.I. 1998/1265 (N.I. 8), Schedule 1, paragraph 19
(f) Article 12(6) was amended by S.I. 2004/3078 (N.I. 19), Article 17
(g) S.I. 1996/1921 (N.I. 18)
(h) See S.R. 1999 No. 481
(i) S.R. 2005 No. 150, as amended by S.R. 2005 No. 376

- (a) in rule 1(5)(c), for “paragraph 4(h)” substitute “paragraph 4(j)”;
- (b) in rule 4(4)(d) for “on what grounds” substitute “the details of the grounds of such resistance”;
- (c) in rule 4(6)(a) and (7)(a), before the words “the grounds” insert “details of”;
- (d) in rule 8(4) after “reviewed under rule 33” insert “and of their right to appeal”;
- (e) in rule 10(2)(c) omit “or information”;
- (f) in rule 10(2)(d), for “disclose documents or information to a party or to allow a party to inspect such material as might be ordered by a county court” substitute “grant to a party such discovery or inspection (including the taking of copies) of documents as might be granted by a county court”;
- (g) in rule 10(5), for “material” substitute “documents”;
- (h) in rule 13(1)(b) –
 - (i) for “make an order to strike out” substitute “make a decision to strike out”;
 - (ii) for “order that a respondent” substitute “make a decision that a respondent”;
- (i) for rule 13(2) substitute—

“(2) A decision or order may also provide that unless the decision or order is complied with the tribunal or chairman may make a decision striking out the claim or, as the case may be, the response on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 19 or hold a pre-hearing review or a hearing under rule 26.”;
- (j) for rule 18(5) substitute—

“(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. Decisions or 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 26 is no longer necessary in those proceedings.”;
- (k) for rule 18(6) substitute—

“(6) Before a decision or order listed in paragraph (7) is made, notice must be given in accordance with rule 19. The decisions or orders listed in paragraph (7) may be made at a pre-hearing review or a hearing under rule 26 if one of the parties has so requested. If no such request has been made such decisions or orders may be made in the absence of the parties.”;
- (l) in rule 18(7) for “an order” in the first line substitute “a decision or order”;
- (m) for rule 19 substitute—

“**19.**—(1) Before a chairman or a tribunal makes a decision or order described in rule 18(7), except where the decision or order is one described in rule 13(2) or it is a temporary restricted reporting order made in accordance with rule 50, the Secretary shall send notice to the party against whom it is proposed that the decision or order should be made. The notice shall inform him of the decision or order to be considered and give him the opportunity to give reasons why the decision or 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 decision or order should not be made.

(2) Where a notice required by paragraph (1) is sent in relation to a decision 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).”;
- (n) in rule 22(4) after the words “commences on” in the first line insert “the day following”;

- (o) in rule 22(5) at the end of sub-paragraph (d) replace the full stop with a semi-colon and after that sub-paragraph insert—
 - “(e) regulation 13, 14(2) or 16(1) of the Working Time Regulations (Northern Ireland) 1998^(a) (right to paid annual leave).”;
- (p) for rule 25(4) substitute—
 - “(4) Where the whole or part of the claim is withdrawn, the proceedings or the relevant part of the proceedings so withdrawn are brought to an end against the respondent on that date and the tribunal or chairman shall dismiss the proceedings or the relevant part of the proceedings so withdrawn. The proceedings or the relevant part of the proceedings so withdrawn cannot be continued by the claimant (unless the decision to dismiss is successfully reviewed or appealed).”;
- (q) omit rule 25(5);
- (r) in rule 27(2) for “to call witnesses” substitute “to call and question witnesses”;
- (s) in rule 35(2), after the words “in accordance with rule 34(3)” insert “and provide the details of the grounds so identified”;
- (t) for rule 54(2)(a) substitute—
 - “(a) do in relation to particular proceedings before it anything which can be required by direction to be done in relation to particular Crown employment proceedings under paragraph (1);”.
- (2) In Schedule 2—
 - (a) in rule 3(2) and (3), before each occurrence of the words “the written grounds” insert “details of”;
 - (b) in rule 4(1) before “grounds” insert “details of the”;
 - (c) in rules 4(2), 8(4)(a), (5)(a) and (6) before the words “the grounds” insert “details of”.
- (3) In Schedule 4, in rule 2, before the words “the grounds” insert “details of”.
- (4) In Schedule 5—
 - (a) in rules 2(e) and 5(1)(b), before the words “the grounds” insert “details of”;
 - (b) in rule 8(3) at the end insert “Where part of the appeal is withdrawn, the relevant part of the proceedings so withdrawn is brought to an end against the respondent on that date and the tribunal or chairman shall dismiss that part of the proceedings.”.
- (5) In Schedule 6, in rule 2(e), before the words “the grounds” insert “details of”.

Sealed with the Official Seal of the Department for Employment and Learning on 20th December 2005.



D. S. S. McAuley
A senior officer of the
Department for Employment and Learning

(a) S.R. 1998 No. 386

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of technical amendments to the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 (“the principal Regulations”). These are designed primarily to correct drafting errors in the principal Regulations. They also clarify existing powers of an industrial tribunal.

Paragraphs (1)(b), (c) and (s), (2)(a), (3), (4) and (5) of regulation 3 amend the Schedules to the principal Regulations to make it clear that detailed grounds should be provided to assist the Office of Industrial Tribunals and the Fair Employment Tribunal in managing cases more effectively. Sub-paragraphs (h)-(m) of regulation 3(1) make amendments ensuring that a decision to strike out at a pre-hearing review is a final determination of proceedings. Regulation 3(1)(p) clarifies the position where part of a claim is withdrawn. Regulation 3(1)(r) clarifies the right to question witnesses.

Regulation 3(1)(t) implements Article 17 of the Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), which provides that certain powers available to industrial tribunals under rule 54(1) of Schedule 1 to the principal Regulations (national security proceedings) can be used in particular proceedings, whether or not they are Crown employment proceedings, if the tribunal or the chairman considers it expedient in the interests of national security.

Given that the changes introduced by these Regulations are not substantive, full Regulatory and Equality Impact Assessments have not been carried out in relation to them. No significant equality impact arises from implementation of the Regulations.

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