

SCHEDULE 1

THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2020

PART 1

INTRODUCTORY AND GENERAL

Interpretation

1.—(1) In these Rules—

“Agency” means the Labour Relations Agency;

“case management order” means an order or decision of any kind in relation to the conduct of proceedings, not including the determination of any issue which would be the subject of a judgment;

“claim” means any proceedings before a tribunal making a complaint;

“claimant” means the person bringing the claim;

“Commission” means the Equality Commission for Northern Ireland;

“complaint” means anything that is referred to as a claim, complaint, reference, application or appeal in any statutory provision which confers jurisdiction on a tribunal;

“disclosure”, for the purposes of rules 24 and 27, means stating that a document exists or has existed;

“early conciliation certificate” means a certificate issued by the Agency in accordance with the Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020(1);

“early conciliation exemption” means an exemption contained in regulation 3(1) of the Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020;

“early conciliation number” means the unique reference number which appears on an early conciliation certificate;

“electronic communication” has the meaning given to it by section 4(1) of the Electronic Communications (Northern Ireland) Act 2001(2);

“employee panel” means a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employees as it sees fit;

“employer panel” means a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employers as it sees fit;

“employee’s contract claim” means a claim brought by an employee in accordance with Articles 3 and 7 of the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994(3);

(1) S.R. 2020 No. 2.

(2) 2001 c. 9; section 4(1) was amended by 2003 c. 21.

(3) S.R. 1994 No. 308.

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“employer’s contract claim” means a claim brought by an employer in accordance with Articles 4 and 8 of the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994;

“employment judge” means one of—

- (a) the President;
- (b) the Vice-President;
- (c) a member of the panel of employment judges,

and in relation to particular proceedings it means the employment judge to whom the proceedings have been referred by the President or the Vice-President;

“Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996⁽⁴⁾;

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

“Fair Employment Tribunal” means the Fair Employment Tribunal for Northern Ireland established in accordance with regulation 5;

“industrial tribunal” means an industrial tribunal established in accordance with regulation 4;

“Industrial Tribunals Order” means the Industrial Tribunals (Northern Ireland) Order 1996;

“judgment” means a decision made at any stage of the proceedings, but not including a decision under rule 12 or 17 (reconsideration of rejection), which finally determines—

- (a) a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs); or
- (b) any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, whether a claim should be struck out or a jurisdictional issue);

“panel of employment judges” means a panel of persons appointed by the Northern Ireland Judicial Appointments Commission meeting any of the qualifications in Article 82(2) of the Fair Employment and Treatment Order;

“prescribed form” means any appropriate form prescribed by the Department in accordance with regulation 15;

“present” means deliver (by any means permitted under rule 82) to the tribunal office;

“President” means the President of the Industrial Tribunals and the Fair Employment Tribunal appointed under Article 82(1)(a) of the Fair Employment and Treatment Order or the person nominated by the Northern Ireland Judicial Appointments Commission under Article 82(6) of that Order to discharge for the time being the functions of the President;

“register” means the register of judgments and written reasons kept in accordance with regulation 16;

“relevant proceedings” means proceedings listed in Article 20(1) of the Industrial Tribunals Order or proceedings under Article 38 of the Fair Employment and Treatment Order;

“respondent” means the person against whom a claim is made;

“Secretary” means a person for the time being appointed to act as the Secretary of the tribunal (and any function of the Secretary may be performed by a person acting with the authority of the Secretary);

“tribunal”, unless otherwise specified, means—

- (a) any industrial tribunal or Fair Employment Tribunal; and

(4) S.I. 1996/1969 (N.I. 16).

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- (b) in relation to particular proceedings, the industrial tribunal or Fair Employment Tribunal to which those proceedings relate;

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

“Vice-President” means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal or the person nominated by the Northern Ireland Judicial Appointments Commission 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) Any reference in the Rules to a tribunal applies to a tribunal comprising of—
 - (a) an employment judge acting alone;
 - (b) an employment judge acting with one or two other members.
- (3) An order or other decision of the tribunal is either a case management order or a judgment.

Overriding objective

2. The overriding objective of these Rules is to enable tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the tribunal.

Alternative dispute resolution and the role of the Agency

3.—(1) A tribunal shall wherever practicable and appropriate encourage the use by the parties of conciliation or other means of resolving their disputes by agreement.

(2) Where a claim starts relevant proceedings and has not been rejected under rule 11(2), the Secretary may send a copy of all documents, orders, decisions, written reasons and notices to the Agency and shall inform the parties that the services of an Agency conciliation officer are available to them.

(3) Subject to rule 44 (privacy and restrictions on disclosure) and rules 91 and 92 (national security), a representative of the Agency may attend any hearing.

General power to regulate procedure

4. A tribunal, having regard to the principles contained in the overriding objective and any Presidential guidance, and subject to the provisions of these Rules and any practice directions, may regulate its own procedure.

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Time

5.—(1) Unless otherwise specified by the tribunal, an act required by these Rules, a practice direction or an order of a tribunal to be done on or by a particular day may be done at any time before midnight on that day. If there is an issue as to whether the act has been done by that time, the party claiming to have done it shall prove compliance.

(2) If the time specified by these Rules, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done before midnight on the next working day. “Working day” means any day except a Saturday, a Sunday or a public holiday⁽⁵⁾.

(3) Where any act is required to be, 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 response shall be presented within 28 days of the date on which the respondent was sent a copy of the claim: if the claim was sent on 1st May the last day for presentation of the response is 29th May.)

(4) Where any act is required to be, 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 present representations in writing for consideration by a tribunal at a hearing, they shall be presented not less than 7 days before the hearing: if the hearing is fixed for 8th May, the representations shall be presented no later than 1st May.)

(5) Where the tribunal imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(6) Where time is specified by reference to the date when a document is sent to a person by the tribunal, the date when the document was sent shall, unless the contrary is proved, be regarded as the date endorsed on the document as the date of sending or, if there is no such endorsement, the date shown on the letter accompanying the document.

Extending or shortening time

6. A tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.

Irregularities and non-compliance

7. A failure to comply with any provision of these Rules (except rule 9(1), 15(1), 21 or 23) or any order of a tribunal (except for an order under rules 33 or 34) does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the tribunal may take such action as it considers just, which may include all or any of the following—

- (a) waiving or varying the requirement;
- (b) striking out the claim or the response, in whole or in part, in accordance with rule 32;
- (c) barring or restricting a party’s participation in the proceedings;
- (d) awarding costs in accordance with rules 71 to 81.

Presidential guidance

8. The President may publish guidance as to matters of practice and as to how the powers conferred by these Rules may be exercised. Any such guidance shall be published in an appropriate

(5) “Public holiday” is defined in s. 39(8) of the Interpretation Act (Northern Ireland) 1954 (c. 33) so as to include Christmas Day, Good Friday, any bank holiday appointed by or under any statutory provision and any day appointed for public thanksgiving or mourning. Schedule 1 of the Banking and Financial Dealings Act 1971 (c. 80) lists the following bank holidays in respect of Northern Ireland: 17th March (or 18th March if 17th is a Sunday); Easter Monday; the last Monday in May; the last Monday in August; 26th December (if it is not a Sunday); and 27th December (if 25th or 26th is a Sunday).

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manner to bring it to the attention of claimants, respondents and their advisers. Tribunals must have regard to any such guidance, but they shall not be bound by it.