

SCHEDULE 3

Regulation 17(2)(b)

THE INDUSTRIAL TRIBUNALS (EQUAL VALUE) RULES OF PROCEDURE 2020

Application of Schedule 3

1.—(1) This Schedule applies to proceedings involving an equal value claim and modifies the rules in Schedule 1 in relation to such proceedings.

(2) The definitions in rule 1 of Schedule 1 apply to terms in this Schedule and in this Schedule—

“comparator” means the person of the opposite sex to the claimant in relation to whom the claimant alleges that his or her work is of equal value;

“Equal Pay Act” means the Equal Pay Act (Northern Ireland) 1970(1);

“equal value claim” means a claim which rests upon entitlement to the benefit of an equality clause by virtue of the operation of section 1(2)(c) of the Equal Pay Act(2);

“the facts relating to the question” has the meaning in rule 6(1)(a);

“independent expert” means a member of the panel of independent experts mentioned in section 2A(4)(3) of the Equal Pay Act;

“the question” means whether the claimant’s work is of equal value to that of the comparator; and

“report” means a report required by a tribunal to be prepared in accordance with section 2A(1)(b)(4) of the Equal Pay Act.

(3) A reference in this Schedule to a rule is a reference to a rule in this Schedule unless otherwise provided.

(4) A reference in this Schedule to “these rules” is a reference to the rules in Schedules 1 and 3 unless otherwise provided.

(5) Any reference in the Rules to a tribunal applies to a tribunal comprising—

(a) an employment judge acting alone;

(b) an employment judge acting with one or two other members.

General power to manage proceedings

2.—(1) The tribunal may, subject to rules 3(1) and 6(1), order—

(a) that no new facts shall be admitted in evidence by the tribunal unless they have been disclosed to all other parties in writing before a date specified by the tribunal (unless it was not reasonably practicable for a party to have done so);

(b) the parties to send copies of documents or provide information to the independent expert;

(c) the respondent to grant the independent expert access to the respondent’s premises during a period specified in the order to allow the independent expert to conduct interviews with persons identified as relevant by the independent expert;

(d) when more than one expert is to give evidence in the proceedings, that those experts present to the tribunal a joint statement of matters which are agreed between them and matters on which they disagree.

(1) 1970 c.32.

(2) Section 1(2)(c) was inserted by S.R. 1984 No. 16, regulation 2(1).

(3) Section 2A was inserted by S.R. 1984 No. 16, regulation 3(1); and paragraph (4) was amended by S.R. 2005 No. 145, regulation 2(6).

(4) Sub-paragraph (b) was amended by S.R. 2005 No. 145, regulation 2(2)(a).

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(2) In managing the proceedings, the tribunal shall have regard to the indicative timetable in the Annex to this Schedule.

Conduct of stage 1 equal value hearing

3.—(1) Where there is a dispute as to whether any work is of equal value (as mentioned in section 1(2)(c) of the Equal Pay Act) the tribunal shall conduct a hearing, which shall be referred to as a “stage 1 equal value hearing”, and at that hearing shall—

- (a) strike out the claim (or the relevant part of it) if in accordance with section 2A(2A)(5) of the Equal Pay Act the tribunal must determine that the work of the claimant and the comparator are not of equal value;
- (b) determine the question or require an independent expert to prepare a report on the question;
- (c) if the tribunal has decided to require an independent expert to prepare a report on the question, fix a date for a further hearing, which shall be referred to as a “stage 2 equal value hearing”; and
- (d) if the tribunal has not decided to require an independent expert to prepare a report on the question, fix a date for the final hearing.

(2) Before a claim or part is struck out under paragraph (1)(a), notice shall be sent to the claimant, who shall be allowed to make representations to the tribunal as to whether the evaluation contained in the study in question falls within paragraph (a) or (b) of section 2A(2A) of the Equal Pay Act. Such notice need not be sent if the claimant has been given an opportunity to make such representations orally to the tribunal.

(3) The tribunal may, on the application of a party, hear evidence and submissions on the issue contained in section 1(3) of the Equal Pay Act (defence of a genuine material factor) before determining whether to require an independent expert to prepare a report under paragraph (1)(b).

(4) The parties shall be given reasonable notice of the date of the stage 1 equal value hearing. The notice shall specify the matters that are to be, or may be, considered at the hearing and refer to the standard orders in rule 4.

Standard orders for stage 1 equal value hearing

4.—(1) At a stage 1 equal value hearing a tribunal shall, unless it considers it inappropriate to do so, order that—

- (a) before the end of the period of 14 days the claimant shall—
 - (i) disclose in writing to the respondent the name of any comparator, or, if the claimant is not able to name the comparator, disclose information which enables the respondent to identify the comparator; and
 - (ii) identify to the respondent in writing the period in relation to which the claimant considers that the claimant’s work and that of the comparator are to be compared;
- (b) before the end of the period of 28 days—
 - (i) where the claimant has not disclosed the name of the comparator to the respondent under sub-paragraph (a) and the respondent has been provided with sufficient detail to be able to identify the comparator, the respondent shall disclose in writing the name of the comparator to the claimant;
 - (ii) the parties shall provide each other with written job descriptions for the claimant and any comparator;

(5) Paragraph (2A) was inserted by S.R. 2005 No. 145, regulation 2(5).

- (iii) the parties shall identify to each other in writing the facts which they consider to be relevant to the question;
 - (c) the respondent shall grant access to the respondent's premises during a period specified in the order to allow the claimant and his or her representative to interview any comparator;
 - (d) the parties shall before the end of the period of 56 days present to the tribunal an agreed written statement specifying—
 - (i) job descriptions for the claimant and any comparator;
 - (ii) the facts which both parties consider are relevant to the question;
 - (iii) the facts on which the parties disagree (as to the fact or as to the relevance to the question) and a summary of their reasons for disagreeing;
 - (e) the parties shall, at least 56 days before the final hearing, disclose to each other, to any independent or other expert and to the tribunal written statements of any facts on which they intend to rely in evidence at the final hearing; and
 - (f) the parties shall, at least 28 days before the final hearing, present to the tribunal a statement of facts and issues on which the parties are in agreement, a statement of facts and issues on which the parties disagree and a summary of their reasons for disagreeing.
- (2) The tribunal may add to, vary or omit any of the standard orders in paragraph (1).

Involvement of independent expert in fact finding

5. Where the tribunal has decided to require an independent expert to prepare a report on the question, it may at any stage of the proceedings, on its own initiative or on the application of a party, order the independent expert to assist the tribunal in establishing the facts on which the independent expert may rely in preparing the report.

Conduct of stage 2 equal value hearing

6.—(1) Any stage 2 equal value hearing shall be conducted by a tribunal and at the hearing the tribunal shall—

- (a) make a determination of facts on which the parties cannot agree which relate to the question and shall require the independent expert to prepare the report on the basis of facts which have (at any stage of the proceedings) either been agreed between the parties or determined by the tribunal (referred to as “the facts relating to the question”); and
- (b) fix a date for the final hearing.

(2) Subject to paragraph (3), the facts relating to the question shall, in relation to the question, be the only facts on which the tribunal shall rely at the final hearing.

(3) At any stage of the proceedings the independent expert may make an application to the tribunal for some or all of the facts relating to the question to be amended, supplemented or omitted.

(4) The parties shall be given reasonable notice of the date of the stage 2 equal value hearing. The notice shall draw the attention of the parties to this rule and refer to the standard orders in rule 7.

Standard orders for stage 2 equal value hearing

7.—(1) At a stage 2 equal value hearing a tribunal shall, unless it considers it inappropriate to do so, order that—

- (a) by a specified date the independent expert shall prepare a report on the question and shall (subject to rule 13) send copies of it to the parties and to the tribunal; and

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- (b) the independent expert shall prepare the report on the question on the basis only of the facts relating to the question.
- (2) The tribunal may add to, vary or omit any of the standard orders in paragraph (1).

Final hearing

8.—(1) Where an independent expert has prepared a report, the tribunal shall admit the report in evidence unless it determines that the report is not based on the facts relating to the question. If the tribunal does not admit the report, it may determine the question itself or require another independent expert to prepare a report on the question.

(2) The tribunal may refuse to admit evidence of facts or hear submissions on issues which have not been disclosed to the other party as required by these rules or any order (unless it was not reasonably practicable for a party to have done so).

Duties and powers of the independent expert

9.—(1) When a tribunal makes an order requiring an independent expert to prepare a report under rule 3(1)(b) or to assist the tribunal in establishing the facts under rule 5, it shall inform that independent expert of the duties and powers under this rule.

- (2) The independent expert shall have a duty to the tribunal to—
 - (a) assist it in furthering the overriding objective set out in rule 2 of Schedule 1;
 - (b) comply with the requirements of these rules and any orders made by the tribunal;
 - (c) keep the tribunal informed of any delay in complying with any order (with the exception of minor or insignificant delays in compliance);
 - (d) comply with any timetable imposed by the tribunal in so far as this is reasonably practicable;
 - (e) when requested, inform the tribunal of progress in the preparation of the report;
 - (f) prepare a report on the question based on the facts relating to the question and (subject to rule 13) send it to the tribunal and the parties; and
 - (g) attend hearings.

(3) The independent expert may make an application for any order or for a hearing to be held as if the independent expert were a party to the proceedings.

(4) At any stage of the proceedings the tribunal may, after giving the independent expert the opportunity to make representations, withdraw the requirement on the independent expert to prepare a report. If it does so, the tribunal may itself determine the question, or it may require a different independent expert to prepare the report.

(5) When paragraph (4) applies the independent expert who is no longer required to prepare the report shall provide the tribunal with all documentation and work in progress relating to the proceedings by a specified date. Such documentation and work in progress must be in a form which the tribunal is able to use and may be used in relation to those proceedings by the tribunal or by another independent expert.

Use of expert evidence

10.—(1) The tribunal shall restrict expert evidence to that which it considers is reasonably required to resolve the proceedings.

(2) An expert shall have a duty, overriding any obligation to the person instructing or paying the expert, to assist the tribunal on matters within the expert's expertise.

(3) No party may call an expert or put in evidence an expert's report without the permission of the tribunal. No expert report shall be put in evidence unless it has been disclosed to all other parties and any independent expert at least 28 days before the final hearing.

(4) In proceedings in which an independent expert has been required to prepare a report on the question, the tribunal shall not admit evidence of another expert on the question unless such evidence is based on the facts relating to the question. Unless the tribunal considers it inappropriate to do so, any such expert report shall be disclosed to all parties and to the tribunal on the same date on which the independent expert is required to send his report to the parties and to the tribunal.

(5) If an expert (other than an independent expert) does not comply with these rules or an order made by the tribunal, the tribunal may order that the evidence of that expert shall not be admitted.

(6) Where two or more parties wish to submit expert evidence on a particular issue, the tribunal may order that the evidence on that issue is to be given by one joint expert only and if the parties wishing to instruct the joint expert cannot agree an expert, the tribunal may select an expert.

Written questions to experts

11.—(1) When an expert (including an independent expert) has prepared a report, a party or any other expert involved in the proceedings may put written questions about the report to that expert.

(2) Unless the tribunal agrees otherwise, written questions under paragraph (1)—

- (a) may be put once only;
- (b) must be put within 28 days of the date on which the parties were sent the report;
- (c) must be for the purpose only of clarifying the factual basis of the report; and
- (d) must be copied to all other parties and experts involved in the proceedings at the same time as they are sent to the expert who prepared the report.

(3) An expert shall answer written questions within 28 days of receipt and the answers shall be treated as part of the expert's report.

(4) Where a party has put a written question to an expert instructed by another party and the expert does not answer that question within 28 days, the tribunal may order that the party instructing that expert may not rely on the evidence of that expert.

Procedural matters

12.—(1) Where an independent expert has been required to prepare a report, the Secretary shall send that expert notice of any hearing, application, order or judgment in the proceedings as if the independent expert were a party to those proceedings and when these rules or an order requires a party to provide information to another party, such information shall also be provided to the independent expert.

(2) There may be more than one stage 1 or stage 2 equal value hearing in any case.

(3) Subject to the provisions of this Schedule, any power conferred on an employment judge by Schedule 1 may be carried out in an equal value claim by a tribunal or an employment judge.

National security proceedings

13. Where in an equal value claim a direction is given, or order is made, under rule 91 of Schedule 1 (national security)—

- (a) any independent expert appointed shall send a copy of any report and any responses to written questions to the tribunal only; and
- (b) before the parties are sent a copy of a report or answers which have been received from an independent expert, the procedure set out in rule 6 of Schedule 2 shall be followed as

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if that rule referred to the independent expert’s report or answers (as the case may be) instead of written reasons, except that the independent expert’s report or answers shall not be entered on the register.

ANNEX

The indicative timetable

<i>Claims not involving an independent expert</i>	<i>Claims involving an independent expert</i>
Claim	Claim
↓	↓
28 days	28 days
↓	↓
Response	Response
↓	↓
3 weeks	3 weeks
↓	↓
↓	Stage 1 equal value hearing
↓	↓
↓	10 weeks
↓	↓
↓	Stage 2 equal value hearing
↓	↓
↓	8 weeks
↓	↓
↓	Independent expert’s report
↓	↓
↓	4 weeks
↓	↓
↓	Written questions
↓	↓
↓	8 weeks
↓	↓
Hearing	Hearing
<i>Total: 25 weeks</i>	<i>Total: 37 weeks</i>