

1974 No. 1926

HEALTH AND SAFETY

INDUSTRIAL TRIBUNALS

**The Industrial Tribunals (Improvement and Prohibition
Notices Appeals) (Scotland) Regulations 1974**

Made - - - - 18th November 1974

Laid before Parliament 28th November 1974

Coming into Operation 1st January 1975

The Secretary of State in exercise of the powers conferred on him by paragraph 21 of Schedule 1 to the Trade Union and Labour Relations Act 1974(a), section 24(2) of the Health and Safety at Work etc. Act 1974(b) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Industrial Tribunals (Improvement and Prohibition Notices Appeals) (Scotland) Regulations 1974 and shall come into operation on 1st January 1975.

Interpretation

2.—(1) The Interpretation Act 1889(c) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(2) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

“appellant” means a person who has appealed to a tribunal under section 24 of the principal Act;

“the clerk to the tribunal” means the person appointed by the Secretary of the Tribunals or an Assistant Secretary to act in that capacity at one or more hearings;

“decision” in relation to a tribunal includes a direction under Rule 4 and any other order which is not an interlocutory order;

“hearing” means a sitting of a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the tribunal to reach a decision on any question;

“improvement notice” means a notice under section 21 of the principal Act;

“inspector” means a person appointed under section 19(1) of the principal Act;

(a) 1974 c. 52.
(c) 1889 c. 63.

(b) 1974 c. 37.

“nominated chairman” means a member of the panel of chairmen for the time being nominated by the President;

“the Office of the Tribunals” means the Central Office of the Industrial Tribunals (Scotland);

“the panel of chairmen” means the panel of persons, being advocates or solicitors of not less than seven years’ standing, appointed by the Lord President of the Court of Session in pursuance of Regulation 5(2) of the Industrial Tribunals (Scotland) Regulations 1965(a), as amended (b);

“party” means the appellant and the respondent;

“the President” means the President of the Industrial Tribunals (Scotland) or the person nominated by the Lord President of the Court of Session to discharge for the time being the functions of the President;

“the principal Act” means the Health and Safety at Work etc. Act 1974;

“prohibition notice” means a notice under section 22 of the principal Act;

“Register” means the Register kept in pursuance of the Industrial Tribunals (Labour Relations) (Scotland) Regulations 1974(c);

“respondent” means the inspector who issued the improvement notice or prohibition notice which is the subject of the appeal;

“Rule” means a Rule of Procedure contained in the Schedule to these Regulations;

“the Secretary of the Tribunals” and “an Assistant Secretary of the Tribunals” mean respectively the persons for the time being acting as the Secretary or as an Assistant Secretary of the Office of the Tribunals;

“tribunal” means an industrial tribunal (Scotland) established in pursuance of the Industrial Tribunals (Scotland) Regulations 1965, as amended, and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President or by a nominated chairman.

Proceedings of tribunals

3. The Rules of Procedure contained in the Schedule to these Regulations shall have effect in relation to appeals to a tribunal under section 24 of the principal Act against improvement notices or prohibition notices relating to matters arising in Scotland.

Proof of decisions of tribunals

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

Signed by order of the Secretary of State.

18th November 1974.

Harold Walker,

Joint Parliamentary Under Secretary of State,
Department of Employment.

(a) S.I. 1965/1157 (1965 II, p. 3266).

(b) The relevant amending instrument is S.I. 1967/302 (1967 I, p. 1050).

(c) S.I. 1974/1387 (1974 II, p. 5342).

SCHEDULE

Regulation 3

RULES OF PROCEDURE

Notice of Appeal

1. An appeal shall be commenced by the appellant sending to the Secretary of the Tribunals a notice of appeal which shall be in writing and shall set out:—

- (a) the name of the appellant and his address for the service of documents;
- (b) the date of the improvement notice or prohibition notice appealed against and the address of the premises or place concerned;
- (c) the name and address of the respondent;
- (d) particulars of the requirements or directions appealed against; and
- (e) the grounds of the appeal.

Time limit for bringing appeal

2.—(1) Subject to paragraph (2) of this Rule, the notice of appeal shall be sent to the Secretary of the Tribunals within 21 days from the date of the service on the appellant of the notice appealed against.

(2) A tribunal may extend the time mentioned above where it is satisfied on an application made in writing to the Secretary of the Tribunals either before or after the expiration of that time that it is not or was not reasonably practicable for an appeal to be brought within that time.

Action upon receipt of notice of appeal

3. Upon receiving a notice of appeal the Secretary of the Tribunals shall enter particulars of it in the Register and shall forthwith send a copy of it to the respondent and inform the parties in writing of the case number of the appeal entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary of the Tribunals shall be sent.

Application for direction suspending the operation of a prohibition notice

4.—(1) Where an appeal has been brought against a prohibition notice and an application is made to the tribunal by the appellant in pursuance of section 24(3)(b) of the principal Act for a direction suspending the operation of the notice until the appeal is finally disposed of or withdrawn, the application shall be sent in writing to the Secretary of the Tribunals and shall set out:—

- (a) the case number of the appeal if known to the appellant or particulars sufficient to identify the appeal; and
- (b) the grounds on which the application is made.

(2) Upon receiving the application, the Secretary of the Tribunals shall enter particulars of it against the entry in the Register relating to the appeal and shall forthwith send a copy of it to the respondent.

Power to require attendance of witnesses and production of documents etc.

5.—(1) A tribunal may on the application of a party made either by notice to the Secretary of the Tribunals or at the hearing—

- (a) require a party to furnish in writing to another party further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) grant to a party such a commission and diligence for the recovery or inspection of documents as might be granted by the sheriff court; and

(c) require the attendance of any person as a witness or require the production of any document relating to the matter to be determined, and may appoint the time at or within which or the place at which any act required in pursuance of this Rule is to be done.

(2) The tribunal shall not under paragraph (1) of this Rule require the production of any document certified by the Secretary of State as being a document of which the production would be against the interests of national security.

(3) A person on whom a requirement has been made under paragraph (1) of this Rule may apply to the tribunal either by notice to the Secretary of the Tribunals or at the hearing to vary or set aside the requirement.

(4) No such application to vary or set aside shall be entertained in a case where a time has been appointed under paragraph (1) of this Rule in relation to the requirement unless it is made before the time or, as the case may be, expiration of the time so appointed.

(5) Every document containing a requirement under paragraph (1) (b) or (c) of this Rule shall contain a reference to the fact that under paragraph 21(6) of Schedule 1 to the Trade Union and Labour Relations Act 1974 any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine not exceeding £100.

Time and place of hearing and appointment of assessor

6.—(1) The President or a nominated chairman shall fix the date, time and place of the hearing of the appeal and of any application under Rule 4, and the Secretary of the Tribunals shall not less than 14 days (or such shorter time as may be agreed by him with the parties) before the date so fixed send to each party a notice of hearing which shall include information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.

(2) Where the President or a nominated chairman so directs, the Secretary of the Tribunals shall also send notice of the hearing to such persons as may be directed, but the requirement as to the period of notice contained in the foregoing paragraph of this Rule shall not apply to any such notices.

(3) The President or a nominated chairman may, if he thinks fit, appoint in pursuance of section 24(4) of the principal Act a person or persons having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal as assessor or assessors.

The hearing

7.—(1) Any hearing of or in connection with an appeal shall take place in public unless the tribunal on the application of a party decides that a private hearing is appropriate for the purpose of hearing evidence which relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public or hearing evidence from any person which in the opinion of the tribunal is likely to consist of information the disclosure of which would be seriously prejudicial to the interests of the undertaking of the appellant or of any undertaking in which he works for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 29(1) of the Trade Union and Labour Relations Act 1974.

(2) In cases to which the foregoing provisions of this Rule apply, a member of the Council on Tribunals or of its Scottish Committee in his capacity as such shall be entitled to attend the hearing.

Written representations

8. If a party shall desire to submit representations in writing for consideration by a tribunal at the hearing of the appeal, that party shall send such representations to the Secretary of the Tribunals not less than 7 days before the hearing and shall at the same time send a copy of it to the other party.

Right of appearance

9. At any hearing of or in connection with an appeal a party may appear before the tribunal in person or may be represented by counsel or by a solicitor or by any other person whom he desires to represent him, including in the case of the appellant a representative of a trade union or an employer's association.

Procedure at hearing

10.—(1) At any hearing of or in connection with an appeal a party shall be entitled to make an opening statement, to give evidence on his own behalf, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(2) If a party shall fail to appear or to be represented at the time and place fixed for the hearing of an appeal, the tribunal may dispose of the appeal in the absence of that party or may adjourn the hearing to a later date: Provided that before disposing of an appeal in the absence of a party the tribunal shall consider any written representations submitted by that party in pursuance of Rule 8.

(3) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Decision of tribunal

11.—(1) A decision of a tribunal may be taken by a majority thereof and, if the tribunal shall be constituted of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) The clerk to the tribunal shall transmit the document signed by the chairman to the Secretary of the Tribunals who shall as soon as may be enter it in the Register and shall send a copy of the entry to each of the parties.

(4) The specification of the reasons for the decision shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs and in that event a specification of the reasons shall be sent to the parties and to any appellate court in any proceedings relating to such decision together with the copy of the entry.

(5) The Register shall be kept at the Office of the Tribunals and shall be open to the inspection of any person without charge at all reasonable hours.

(6) The chairman of a tribunal shall have power by certificate under his hand to correct in documents recording the tribunal's decisions clerical mistakes or errors arising therein from any accidental slip or omission.

(7) The clerk to the tribunal shall send a copy of any document so corrected and the certificate of the chairman to the Secretary of the Tribunals who shall as soon as may be make such correction as may be necessary in the Register and shall send a copy of the corrected entry or of the corrected specification of the reasons, as the case may be, to each of the parties.

(8) If any decision is—

- (a) corrected under paragraph (6) of this Rule; or
- (b) reviewed, revoked or varied under Rule 12; or
- (c) altered in any way by order of an appellate court,

the Secretary of the Tribunals shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties.

Review of tribunal's decision

12.—(1) A tribunal shall have power on the application of a party to review and to revoke or vary by certificate under the chairman's hand any of its decisions on the grounds that—

- (a) the decision was wrongly made as a result of an error on the part of the tribunal staff; or
- (b) a party did not receive notice of the proceedings leading to the decision; or
- (c) the decision was made in the absence of a party; or
- (d) new evidence has become available since the making of the decision provided that its existence could not have been reasonably known of or foreseen; or
- (e) the interests of justice require such a review.

(2) An application for the purposes of paragraph (1) of this Rule may be made at the hearing. If the application is not made at the hearing, such application shall be made to the Secretary of the Tribunals within 14 days from the date of the entry of a decision in the Register and must be in writing stating the grounds in full.

(3) An application for the purposes of paragraph (1) of this Rule may be refused by the chairman of the tribunal which decided the case, by the President or by a nominated chairman if in his opinion it has no reasonable prospect of success and he shall state the reasons for his opinion.

(4) If such an application is not refused under paragraph (3) of this Rule, it shall be heard by the tribunal and if it is granted the tribunal shall either vary its decision or revoke its decision and order a re-hearing.

(5) The clerk to the tribunal shall send to the Secretary of the Tribunals the certificate of the chairman as to any revocation or variation of the tribunal's decision under this Rule. The Secretary of the Tribunals shall as soon as may be make such correction as may be necessary in the Register and shall send a copy of the entry to each of the parties.

Expenses

13.—(1) A tribunal may make an order that a party shall pay to another party either a specified sum in respect of the expenses of or in connection with an appeal incurred by that other party or, in default of agreement, the taxed amount of those expenses.

(2) Any expenses required by an order under this Rule to be taxed may be taxed in the sheriff court according to such of the scales prescribed by the sheriff court rules for civil proceedings in the sheriff court as shall be directed by the order.

Miscellaneous powers of tribunal

14.—(1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure.

(2) A tribunal may, if it thinks fit—

- (a) postpone the day or time fixed for, or adjourn, any hearing;

- (b) before granting an application under Rule 5 or 12 require the party making the application to give notice thereof to the other party;
- (c) either on the application of any person or of its own motion, direct any other person to be joined as a party to the appeal (giving such consequential directions as it considers necessary), but may do so only after having given to the person proposed to be joined a reasonable opportunity of making written or oral objection;
- (d) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;
- (e) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;
- (f) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

(3) Any act, other than the hearing of an appeal or of an application for the purposes of Rule 4 or 12(1) or the granting of an extension of time under Rule 2(2), required or authorised by these Rules to be done by a tribunal may be done by, or on the direction of, the President, the chairman of the tribunal or a nominated chairman.

(4) Rule 13 shall apply to an order dismissing proceedings under paragraph (2) of this Rule.

(5) Where the President so directs, any function of the Secretary of the Tribunals may be performed by an Assistant Secretary of the Tribunals and a notice of appeal under Rule 1, an application under Rule 4, and any other notice or other document required by these Rules to be sent to the Secretary of the Tribunals may be sent either to the Secretary of the Tribunals or to an Assistant Secretary of the Tribunals in accordance with such direction.

Notices, etc.

15.—(1) Any notice given under these Rules shall be in writing and all notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraphs (3) and (4) of this Rule) or delivered to or at—

- (a) in the case of a document directed to the Secretary of the Tribunals, the Office of the Tribunals or such other office as may be notified by the Secretary of the Tribunals to the parties;
- (b) in the case of a document directed to a party, his address for service specified in the notice of appeal or in a notice under paragraph (2) of this Rule or (if no address for service is so specified), his last known address or place of business in the United Kingdom or, if the party is a corporation, the corporation's registered or principal office;
- (c) in the case of a 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 such a person is a corporation, the corporation's registered or principal office;

and if sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(2) A party may at any time by notice to the Secretary of the Tribunals and to the other party change his address for service under these Rules.

(3) Where a notice of appeal is not delivered, it shall be sent by the recorded delivery service.

(4) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this Rule, the President or a nominated chairman may make an order for service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this Rule.

(5) In the case of an appeal to which the respondent is an inspector appointed otherwise than by the Health and Safety Executive, the Secretary of the Tribunals shall send to that Executive copies of the notice of appeal and the document recording the decision of the tribunal on the appeal.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations set out the rules of procedure of industrial tribunals in Scotland for the determination of appeals against improvement notices and prohibition notices issued under the Health and Safety at Work etc. Act 1974.

SI 1974/1926
ISBN 0-11-041926-X



780110 419268