
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations and Rules of Procedure establish requirements in relation to proceedings before industrial tribunals (ITs) and the Fair Employment Tribunal (FET). They revoke and replace earlier regulations and rules which separately dealt with these tribunals.

Regulations 4 and 5 confirm the continuation of the two tribunals as separate institutions. Regulation 5 concerns the FET's jurisdiction. Regulation 7 deals with the appointment of tribunal panels. Regulations 8 to 12 deal with the constitution of the tribunals as institutions and of individual tribunal panels. Regulation 13 specifies how the tribunals' resources are to be used and how functions of the President may be delegated. Regulation 14 empowers the President to issue practice directions. Regulation 15 gives the Department for the Economy power to prescribe forms for making and responding to a claim. Regulation 16 requires certain information to be placed on a publicly accessible register. Regulation 18 provides transitional arrangements whereby for the first month after coming into operation a prospective claimant will not be required to engage in early conciliation before submitting a claim and such claim will not be rejected on the grounds of not having engaged in early conciliation. Regulation 18 also preserves the applicability of various provisions of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 and the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005 where a relevant event occurs prior to the coming into operation of these Regulations.

Schedule 1 contains the rules of procedure specifying how most cases will be conducted.

Part 1 is introductory and includes rule 2, which specifies the Rules' overriding objective, which is to ensure that the parties have an equal opportunity to present their case and that each case is dealt with proportionately, flexibly and without undue formality, delay or expense. Rule 3 requires the tribunal to encourage alternative dispute resolution where practicable and appropriate. Rule 4 specifies that a tribunal may regulate its own procedure. This Part also deals with the interpretation of terms (rule 1) and calculation of time periods (rule 5). Rule 6 allows the tribunal to adjust time limits. Rule 7 deals with the consequences of failing to comply with the rules or an order made by the tribunal. Rule 8 states that the President may issue guidance dealing with practice issues.

Part 2 deals with starting a claim. Rules 9 and 10 specify the form that a claim must take. Rule 11 sets out when a claim will be rejected; and rule 12 provides for a rejection to be reconsidered. Rule 13 deals with providing information to the relevant regulator where the claim involves a protected disclosure.

Part 3 specifies the tribunal's actions after receiving a claim. The Secretary must send a copy of an accepted claim to the respondent (rule 14).

Part 4 concerns the response to the claim. Rule 15 sets out what must be included on a response form, which (subject to Rule 18) must be presented within 28 days, and rule 16 allows for the rejection of a response. Per rule 17, a respondent can apply for a rejection to be reconsidered. Rule 18 deals with applications from the respondent to extend time allowed for the response. Rule 19 sets out what happens where a claim is not contested or no response is received on time. Per rule 20, an accepted response will be copied to the other parties.

Part 5 deals with employer's contract claims. Under rule 21, an employer alleging breach of contract must include relevant information in the response form. Rule 22 requires the tribunal to advise the claimant of such a claim, and the claimant (rule 23) must respond within 28 days.

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Part 6 concerns case management and other powers of the tribunal. Rule 24, which specifies the procedure for early case management. Having reviewed documents relevant to the claim, an employment judge may give the parties an assessment of the issues that the tribunal will determine, the arguments and evidence that the parties propose to use, and any opportunities that may exist to resolve the dispute. The employment judge may issue case management orders and can use any means of communication to engage the parties. In accordance with rule 25, the tribunal can issue a case management order at any stage and makes clear that that the powers listed in the rules are not exhaustive. Rule 26 specifies how to apply for a case management order. Rule 27 deals with powers in relation to the production of evidence. Rule 28 makes clear that the tribunal can add, replace or remove a party from proceedings and rule 29 allows for the involvement of anyone who has a legitimate interest. Rule 30 sets out the approach to multiple claims, where a 'lead' case may be identified. Rule 31 deals with the power to convene the FET to hear aspects of a case that would normally only be dealt with by an IT. Rule 32 enables the tribunal to strike out, at any stage, all or part of a claim or response where there has been unreasonable presentation of material or conduct, including non-compliance or failing to pursue the case. No strike out will occur unless a party has had a chance to address the issue. Rule 33 concerns 'unless orders' which are orders that, if there is non-compliance, will result in the dismissal of all or some of the claim or response. Rule 34 concerns deposits, which may be payable if the tribunal believes that a party, in continuing to pursue an issue, has little reasonable prospect of success.

Part 7 sets out rules common to all kinds of hearing. Rule 35 contains a general requirement to conduct hearings fairly. Under it, the tribunal may question parties or witnesses as appropriate to gather evidence and clarify issues. Rule 36 allows for consideration of written material submitted by a party who does not intend to be present at a hearing. Rule 37 deals with presenting evidence on oath or affirmation and provides that a written witness statement, ordinarily, will be considered as a party's main evidence. In the interests of justice, the tribunal has power to exclude a witness until it is time for that person to give evidence. Rule 38 specifies that relevant parts of such witness statements are open for inspection during the hearing. Rule 39 enables the tribunal to restrict the time available to a party for presenting evidence, asking questions of witnesses, or making submissions to the tribunal. Rule 40 allows the use of electronic communication. If a party neither attends a hearing nor sends a representative, rule 41 allows the tribunal to dismiss the claim or proceed without the party, providing that it has first sought to establish why the party is absent and has considered the information received. Per rule 42, a tribunal can convert a preliminary hearing to a final hearing and vice versa. A tribunal may make a majority decision in a case where it is composed of three members, as specified in rule 43. However, where there are only two members, the employment judge has a deciding vote. Rule 44 deals with privacy and the restriction of publicity in sensitive cases.

Part 8 specifies the process for withdrawing a claim. Rule 45 sets out when a claim is considered to be withdrawn. When withdrawn, the tribunal will issue a judgment dismissing the claim under rule 46.

Part 9 concerns preliminary hearings, which are described in rule 47. Rule 48 deals with the arrangements for such hearings which will be conducted by an employment judge alone (rule 49) and, with exceptions, in private (rule 50) unless otherwise agreed.

Part 10 deals with the final hearing (which determines the substantive issues). Parties must receive 14 days' notice of such a hearing (rule 52). Rule 53 specifies how the tribunal is to be comprised. Per rule 54, final hearings will usually be in public.

Part 11 contains rules dealing with judgments, case management orders and reasons. Judgments or case management orders made without a hearing will be signed and communicated to the parties in writing in accordance with rule 55. Where there is a hearing, rule 56 provides that the tribunal may either announce the judgment or order at the hearing or send it as soon as practicable to the parties in writing. Rule 57 sets out how reasons for judgments are to be communicated and what they must contain. Rule 58 provides for these documents to be signed where the employment judge is unable to do so. Rule 59 allows the tribunal to issue an order or judgment on the basis of consent. Rule 60 specifies the effective date of a judgment or order. Rule 61 provides that a copy of any judgment

or order, and associated reasons, will be generally placed on the register. Rule 62 makes clear that a copy of any judgment and written reasons must be referred to a court where the initial referral of the proceedings came from there. Rule 63 allows for the correction of mistakes in any document produced by the tribunal.

Part 12 sets out the procedure for the reconsideration of judgments. Rule 64 provides the power for tribunals to reconsider any judgment in the interests of justice. If the tribunal itself is proposing the reconsideration, rule 65 provides that it must inform the parties as to why before proceeding. Reconsideration may also be prompted by a party's application (rule 66). Having considered such an application, the employment judge will consider whether to accept it (rule 67). If a matter is to be reconsidered, rule 68 generally requires this to be at a hearing. Work under rule 67 and 68 is to be carried out by the employment judge who made the original decision unless this is not practicable (rule 69). Rule 70 makes clear that reconsideration can lead to the original decision being confirmed, varied or revoked.

Part 13 deals with orders for costs and preparation time. Rule 71 provides definitions and rule 72 indicates that costs orders are associated with representation and preparation time orders with self representation. Rule 73 specifies circumstances when a costs or preparation time order may or must be made. An application for such an order, in accordance with rule 74, can be made within 28 days following the judgment. The amount of a costs order, explained in rule 75, is up to £10,000 unless the parties agree otherwise or it is determined in a county court. In calculating costs in respect of fees charged by a lay representative, an hourly rate is to be used, with this amount increasing by £1 each April. The same hourly rate applies in calculating the amount of a preparation time order under rule 76. Rule 77 states that a "wasted costs order" may be made where a party's representative's improper actions or omissions have resulted in costs unreasonably being incurred. A wasted costs order may require the representative to pay all or part of the wasted costs, disallow a payment otherwise due to be made to the representative, or order the representative to repay the client (rule 78). Rule 79 specifies how and when such an order is to be made. Rule 80 makes clear that where a costs, preparation time or wasted costs order is issued, it can include reimbursement for allowances paid by the Department in respect of the person's tribunal attendance. Rule 81 requires the tribunal to consider a party's or representative's ability to pay when assessing the amount of a costs, preparation time or wasted costs order.

Part 14 sets out rules concerning delivery of documents. Rule 82 deals with their delivery to the tribunal; rule 83 to parties; rule 84 to non-parties; and rule 85 with special cases. Rule 86 deals with situations where it appears that sending documents to a particular address is unlikely to bring them to the attention of the person intended to receive them. Rule 87 sets out when a document is taken as received and rule 88 allows the tribunal to treat a document as delivered if it is content that the intended recipient has become aware of it. Rule 89 generally requires communication to the tribunal to be copied to all the other parties.

Part 15 contains some miscellaneous provisions. Rule 90 sets out the procedure whereby a person required to pay a sum under a conciliated settlement may apply to the tribunal seeking a declaration that the sum is not recoverable under the general law of contract. Rules 91 and 92 deals with national security issues.

Part 16 concerns a range of other proceedings. Rule 93 deals with interim relief. Rule 94 permits the Department for the Economy to be treated as a party in proceedings dealing with a payment out of the National Insurance Fund. Rule 95 specifies who is to be treated as respondents in certain cases concerning collective agreements. Rule 96 deals with devolution issues; rule 97 with reference to the Court of Justice of the European Union; and rule 98 with proceedings referred to the tribunal by a court. Rule 99 provides a procedure for referring vexatious litigants to the Attorney General for Northern Ireland, who may seek to impose restrictions on that person's ability to bring future legal proceedings. Under rule 100, the Equality Commission for Northern Ireland must generally be sent copies of judgments and written reasons relating to unlawful discrimination in employment. Rule 101 specifies slight changes to the application of the rules in cases involving appeals against

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industrial training levies. Rule 102 deals similarly with appeals against improvement and prohibition notices imposed for health and safety reasons. Rule 103 caters for cases involving appeals against requirements imposed by the Equality Commission to deal with unlawful discrimination and rule 104 takes a similar approach to applications by the Equality Commission for enforcement of directions it has given or an undertaking it has received in relation to fair employment.

Schedule 2 sets out specific rules with application in national security proceedings.

Schedule 3 sets out specific rules with application in equal pay cases.

Schedule 4 makes revocations and consequential amendments.

A Regulatory Impact Assessment has been prepared and is available from the website of the Department for the Economy at <https://www.economy-ni.gov.uk/consultations/employment-tribunals-consultation> or alongside this Statutory Rule at <http://www.legislation.gov.uk/nisr>.