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STATUTORY RULES OF NORTHERN IRELAND

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**2004 No. 164**

**FAIR EMPLOYMENT**

Fair Employment Tribunal (Rules of Procedure)  
Regulations (Northern Ireland) 2004

*Made* - - - - *2nd April 2004*

*Coming into operation* *4th April 2004*

The Department for Employment and Learning<sup>(1)</sup>, in exercise of the powers conferred on it by Articles 81(1) and (2), 82(5) and (7), 84(1), (2), (3), (4) and (5) and 84B(1) and (2)<sup>(2)</sup> of the Fair Employment and Treatment (Northern Ireland) Order 1998<sup>(3)</sup>, and now vested in it<sup>(4)</sup>, and of every other power enabling it in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2004 and shall come into operation on 4th April 2004.

**Interpretation**

2.—(1) In these Regulations –

“the Order of 1992” means the Industrial Relations (Northern Ireland) Order 1992<sup>(5)</sup>;

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

“appellant” means a person who has appealed to the Fair Employment Tribunal for Northern Ireland under Article 15, 62(7) or 63(5) of the Order of 1998;

“applicant” means a person who has presented a complaint to the Fair Employment Tribunal for Northern Ireland by way of an originating application presented to the Secretary under rule 1 of Schedule 1;

“the clerk to the Tribunal” means the person appointed by the Secretary to act in that capacity at one or more hearings;

“decision” in relation to a tribunal includes –

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(1) Formerly known as the Department of Higher and Further Education, Training and Employment; renamed the Department for Employment and Learning by the Department for Employment and Learning Act (Northern Ireland) 2001 c. 15 (N.I.)  
(2) Article 84B was inserted by S.I. 2003/2902 (N.I. 15), Article 13  
(3) S.I. 1998/3162 (N.I. 21)  
(4) See S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999  
(5) S.I. 1992/807 (N.I. 5)

- (a) a declaration;
- (b) an order, including an order striking out any originating application or notice of appearance made under rule 4(8)(b) or 13(2);
- (c) a recommendation or an award of the tribunal; and
- (d) a determination under rule 6;

but does not include any other interlocutory order or any other decision on an interlocutory matter;

“devolution issue” means a devolution issue within the meaning of paragraph 1 of Schedule 10 to the Northern Ireland Act 1998(6);

“document exchange” means any document exchange for the time being approved by the Lord Chancellor;

“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 a tribunal to reach a decision on any question;

“misconceived” includes having no reasonable prospect of success;

“notice of refusal” means a notice served by the Commission under Article 62(7) or 63(5) of the Order of 1998;

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

“panel of chairmen” means the panel of chairmen of the Fair Employment Tribunal appointed in accordance with Article 82(1) of the Order of 1998;

“the President” means the President of the Industrial Tribunals and the Fair Employment Tribunal or a person nominated by the Lord Chancellor under Article 82(6) of the Order of 1998 to discharge the functions of the President;

“Register” means the Register of applications, appeals and decisions kept in pursuance of regulation 7;

“the relevant authorities” means the persons mentioned in paragraph 5 of Schedule 10 to the Northern Ireland Act 1998;

“respondent” –

- (a) in relation to a complaint to the Fair Employment Tribunal for Northern Ireland under Article 38 of the Order of 1998, has the same meaning as in that Article; and
- (b) in relation to proceedings before the Fair Employment Tribunal for Northern Ireland under Articles 16 and 17 of the Order of 1998, means the person in relation to whom the Commission has made an application under Article 16(1) of that Order or, as the case may require, the person in relation to whom an order has been made under Article 16(3) or (8) of that Order;

“rule” means a rule of procedure contained in the Schedules;

“the Secretary” means the person for the time being acting as the Secretary of the Office of the Tribunals;

“tribunal” means any tribunal which, by virtue of regulation 3(2) and (3), exercises the jurisdiction of the Fair Employment Tribunal for Northern Ireland;

“Vice-President” means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal or a person nominated by the Lord Chancellor under Article 82(6) of the Order of 1998 to discharge the functions of the Vice-President;

(2) In Schedule 2 –

“directions”, except in rule 11, means directions given by the Commission under Article 12, 13 or 57 of the Order of 1998 or substituted by the Tribunal under Article 15 of that Order;

“party” means the appellant or the Commission.

(3) In Schedule 3 –

“application for enforcement” means an application by the Commission under Article 16(1) of the Order of 1998 for enforcement of an undertaking or directions;

“directions”, except in rule 11, means directions given by the Commission under Articles 12, 13 or 57 of the Order of 1998 or substituted by the Tribunal under Article 15 of that Order and includes –

(a) directions given by the Commission under section 12, 13, 14, 33 or 34 of the Fair Employment (Northern Ireland) Act 1989 or substituted by the Tribunal under section 15 of that Act; and

(b) directions given by the Fair Employment Agency for Northern Ireland before the commencement of section 15 of the Fair Employment (Northern Ireland) Act 1989 or substituted by the Fair Employment Appeals Board under section 14 of the Fair Employment (Northern Ireland) Act 1976 for such directions.

“party” means the Commission or the respondent;

“undertaking”, except in rule 6(3)(b)(iii), means an undertaking given to –

(a) the Commission under Article 12, 13 or 57 of the Order of 1998;

(b) the Commission under section 12, 13, 14, 33 or 34 of the Fair Employment (Northern Ireland) Act 1989; or

(c) the Fair Employment Agency for Northern Ireland under section 13(1) or (5) of the Fair Employment Act 1976 before the commencement of section 12 of the Fair Employment (Northern Ireland) Act 1989.

(4) In these Regulations references to Article 15, 16 or 17 of the Order of 1998 include references to those provisions as they are applied for the purposes of Articles 57 and 58 by Article 59 of that Order.

(5) Where any act must 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 respondent receives a copy of an originating application on 1st October. He must present a written notice of appearance to the Secretary within 21 days of receiving the copy. The last day for presentation of the notice is 22nd October.

(6) Where any act must 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 submit representations in writing for consideration by a tribunal at the hearing of the originating application, he must submit them not less than 7 days before the hearing. If the hearing is fixed for 8th October, the representations must be submitted no later than 1st October.

(7) Where the tribunal or a chairman gives any decision, direction, declaration, order, recommendation, award or determination which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(8) In rule 5(2) of Schedule 1, rule 4(1) of Schedule 2 and rule 5(1) of Schedule 3, the requirement to send the notice of hearing to the parties not less than 14 days before the date fixed for the hearing shall not be construed as a requirement for service of the notice to have been effected not less than 14 days before the hearing date, but as a requirement for the notice to have been placed in the post not less than 14 days before that date. For example, a hearing is fixed for 15th October. The last day on which the notice may be placed in the post is 1st October.

### **Establishment of Fair Employment Tribunal for Northern Ireland**

3.—(1) There shall continue to be a Tribunal, known as the Fair Employment Tribunal for Northern Ireland, established for the purposes of exercising the jurisdiction conferred on it by or under the Order of 1998.

(2) The jurisdiction of the Tribunal shall be exercised by a single tribunal or, if the President or the Vice-President so directs, by two or more tribunals.

(3) The President or the Vice-President shall determine at what time and in what place the Tribunal shall sit.

### **Composition of the Tribunal**

4.—(1) The Tribunal shall consist of –

- (a) the President;
- (b) the Vice-President;
- (c) the panel of chairmen;
- (d) a panel of up to 50 members appointed by the Department after consultation with such organisations or associations of organisations representative of employees as it sees fit; and
- (e) a panel of up to 50 members appointed by the Department after consultation with such organisations or associations of organisations representative of employers as it sees fit.

(2) Subject to rule 13(7) of Schedule 1, rule 10(5) of Schedule 2 and rule 10(5) of Schedule 3, the Tribunal shall consist of a chairman and two other members, but in the absence of any one member other than the chairman a hearing may, with the consent of the parties, take place in the absence of such member and in that event the Tribunal shall be deemed to be properly constituted.

(3) For each hearing of any matter before a tribunal the President or Vice-President shall select a chairman, who shall be the President, the Vice-President or a member of the panel of chairmen, and the President or the Vice-President may select himself.

(4) For each hearing the two members of the tribunal other than the chairman shall be selected by the President or the Vice-President as to –

- (a) one member from the panel selected in accordance with paragraph (1)(d); and
- (b) the other from the panel selected in accordance with paragraph (1)(e).

(5) The President or the Vice-President may at any time select from the appropriate panel another person in substitution for the chairman or other member of a tribunal previously selected.

(6) Members of the panel of chairmen shall hold and vacate office under the terms of the instrument under which they are appointed, but may resign office by notice in writing to the Lord Chancellor.

(7) Members of the panels constituted under paragraphs 1(d) and 1(e) shall hold and vacate office under the terms of the instrument under which they are appointed, but may resign office by notice in writing to the Department; and any such member who ceases to hold office shall be eligible for reappointment.

(8) Subject to Article 82(6) of the Order of 1998 the President or the Vice-President may direct that if he is absent or unavailable a person appointed to the panel of chairmen may exercise his functions under regulation 3(2) and (3), paragraphs (4) and (5), Articles 17 and 85 of the Order of 1998 and his power of selection under paragraph (3).

### **Proceedings of the Tribunal**

5. The Rules of Procedure set out in –

- (a) Schedule 1 shall apply in relation to all proceedings before a tribunal except where separate rules of procedure made under the provision of any statutory provision are applicable and where –
  - (i) the respondent or one of the respondents resides or carries on business in Northern Ireland;
  - (ii) had the remedy been by way of action in the county court, the cause of action would have arisen wholly or partly in Northern Ireland; or
  - (iii) the proceedings are to determine a question which has been referred to the tribunal by a court in Northern Ireland;
- (b) Schedule 2 shall apply in relation to appeals to a tribunal under Article 15, 62(7) or 63(5) of the Order of 1998;
- (c) Schedule 3 shall apply in relation to proceedings before a tribunal under Articles 16 and 17 of the Order of 1998.

### **Overriding objective**

6.—(1) The overriding objective of the rules in Schedules 1, 2 and 3 is to enable the Tribunal to deal with cases justly.

- (2) Dealing with a case justly includes, so far as practicable –
  - (a) ensuring that the parties are on an equal footing;
  - (b) saving expense;
  - (c) dealing with the case in ways which are proportionate to the complexity of the issues; and
  - (d) ensuring that it is dealt with expeditiously and fairly.
- (3) The Tribunal shall seek to give effect to the overriding objective when it –
  - (a) exercises any power given to it by the rules; or
  - (b) interprets any rule.
- (4) The parties shall assist the Tribunal to further the overriding objective.

### **Register**

7.—(1) The Secretary shall maintain a Register at the Office of the Tribunals which shall be open to the inspection of any person without charge at all reasonable hours.

- (2) The Register shall contain –
  - (a) details of originating applications in accordance with rule 2 of Schedule 1;
  - (b) details of appeals in accordance with rule 2 of Schedule 2;
  - (c) details of applications for enforcement in accordance with rule 2 of Schedule 3;
  - (d) documents recording the decisions of the Tribunal and the reasons therefor.
- (3) The register, or any part of it, may be kept by means of a computer.

### **Proof of decision of the Tribunal**

8. The production in any proceedings in any court of a document purporting to be certified by the Secretary 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.

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**Transitional provision**

9. These Regulations shall apply in relation to all proceedings to which they relate, irrespective of when those proceedings were commenced.

**Revocations**

10. The Regulations listed in Schedule 4 are hereby revoked.

Sealed with the Official Seal of the Department for Employment and Learning on 2nd April 2004.

L.S.

*R. B. Gamble*  
A senior officer of the  
Department for Employment and Learning

SCHEDULE 1

Regulations 2(1), 5(a), 6(1) and 7(2)(a)

RULES OF PROCEDURE: COMPLAINTS

**Originating application**

1.—(1) Where proceedings are brought by an applicant, they shall be instituted by the applicant presenting to the Secretary an originating application, which shall be in writing and shall set out –

- (a) the name and address of the applicant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the proceedings to be sent;
- (b) the names and addresses of the person or persons against whom relief is sought;
- (c) the grounds, with particulars thereof, on which relief is sought.

(2) Two or more originating applications may be presented in a single document by applicants who claim relief in respect of or arising out of the same set of facts.

(3) Where the Secretary is of the opinion that the originating application does not seek or on the facts stated therein cannot entitle the applicant to a relief which a tribunal has power to give, he may give notice to that effect to the applicant stating the reasons for his opinion and informing him that the application will not be registered unless he states in writing that he wishes to proceed with it.

(4) An application in respect of which such a notice has been given shall not be treated as having been received for the purpose of rule 2 unless the applicant intimates in writing to the Secretary that he wishes to proceed with it; and upon receipt of such an intimation the Secretary shall proceed in accordance with that rule.

(5) Where proceedings are referred to a tribunal by a court, these Rules shall be applied to them, except where the rules are inappropriate, as if the proceedings had been instituted by the presentation of an originating application.

**Action upon receipt of originating application**

2.—(1) Upon receiving an originating application the Secretary shall –

- (a) send a copy of it to the respondent;
- (b) give every party notice in writing of the case number of the application (which shall constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent; and
- (c) send to the respondent a notice in writing which includes information, as appropriate to the case, about the means and time for entering an appearance, the consequences of failure to do so, and the right to receive a copy of the decision.

(2) The Secretary shall enter such of the details of an originating application as are referred to in paragraph (4) in the Register either within 28 days of receiving it or, if that is not practicable, as soon as reasonably practicable thereafter.

(3) The Secretary shall notify the parties that the services of a conciliation officer of the Labour Relations Agency are available to them.

(4) The details of an originating application to be entered in the Register are –

- (a) the case number;
- (b) the date the Secretary received the application;
- (c) the name and address of the applicant;
- (d) the name and address of the respondent;

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- (e) the place where the application was presented; and
- (f) the type of claim brought in general terms without reference to its particulars.

### **Appearance by respondent**

3.—(1) A respondent shall, within 21 days of receiving the copy of the originating application, enter an appearance to the proceedings by presenting to the Secretary a written notice of appearance –

- (a) setting out his full name and address and, if different, an address within the United Kingdom to which he requires notices and documents relating to the proceedings to be sent;
- (b) stating whether or not he intends to resist the application; and
- (c) if he does intend to resist it, setting out sufficient particulars to show on what grounds.

(2) Upon receipt of a notice of appearance the Secretary shall send a copy of it to each other party.

(3) Two or more notices of appearance relating to originating applications in which the relief claimed is in respect of or arises out of the same set of facts may be presented in a single document, provided that in respect of each of the originating applications to which the notices so presented relate –

- (a) the respondent intends to resist the applications and the grounds for doing so are the same in each case; or
- (b) the respondent does not intend to resist the applications.

(4) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except –

- (a) to apply under rule 14 for an extension of the time appointed by this rule for entering an appearance;
- (b) to make an application under rule 4(1);
- (c) to make an application under rule 11(4) in respect of rule 11(1)(b);
- (d) to be called as a witness by another person; or
- (e) to be sent a copy of a document or corrected entry in pursuance of rule 10(5), (8) or (9);

and in the rules which follow, the word “party” only includes such a respondent in relation to his entitlement to take such a part in the proceedings, and in relation to any such part which he takes.

### **Case management**

4.—(1) A tribunal may at any time, on the application of a party or of its own motion, give such directions on any matter arising in connection with the proceedings as appear to the tribunal to be appropriate.

(2) An application under paragraph (1) –

- (a) may be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and set out the grounds of the application; or
- (b) may be made at the hearing of the originating application.

(3) Directions under paragraph (1) may include any requirement relating to evidence (including the provision and exchange of witness statements), the provision of further particulars, and the provision of written answers to questions put to a party by the tribunal.

(4) A tribunal may appoint the time at or within which and the place at which any act required in pursuance of this rule is to be done and may direct that a copy of any document furnished pursuant to any requirement imposed under this rule be sent to the tribunal.



- (5) A tribunal may, on the application of a party or of its own motion –
- (a) require the attendance of any person in Northern Ireland, including a party, either to give evidence or to produce documents or both; or
  - (b) require one party to grant to another such discovery or inspection (including the taking of copies) of documents as might be granted by a county court,

and may appoint the time at or within which or place at which any act in pursuance of this rule is to be done.

(6) Every document containing a requirement imposed under paragraph (5) shall contain a reference to the fact that, under Article 84(9) and (10) of the Order of 1998, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine and, if without reasonable excuse the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine for each day on which the failure continues and the document shall also state the amounts of the current maximum fines.

- (7) Where a requirement has been imposed under paragraph (1) or (5) –
- (a) on a party in his absence; or
  - (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.

- (8) If a requirement under paragraph (1) or (5) is not complied with, the tribunal –
- (a) may make an order in respect of costs under rule 12(1)(a); or
  - (b) before or at the hearing, may strike out the whole or part of the originating application, or, as the case may be, the notice of appearance, and, where appropriate, direct that a respondent be debarred from defending altogether;

but a tribunal shall not exercise its powers under this paragraph unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so, or the party has been given an opportunity to show cause orally why the powers conferred by this paragraph should not be exercised.

### **Time and place of hearing**

5.—(1) The President or the Vice-President shall fix the date, time and place of the hearing of the originating application and the Secretary shall send to each party a notice of hearing together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents, representation by another person and the making of written representations.

(2) The Secretary shall send the notice of hearing to every party not less than 14 days before the date fixed for the hearing except where the Secretary has agreed a shorter time with the parties.

### **Entitlement to bring or contest proceedings**

6.—(1) A tribunal may at any time before the hearing of an originating application, on the application of a party made by notice to the Secretary or of its own motion, hear and determine any issue relating to the entitlement of any party to bring or contest the proceedings to which the originating application relates.

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(2) A tribunal shall not determine such an issue unless the Secretary has sent notice to each of the parties giving them an opportunity to submit representations in writing and to advance oral argument before the tribunal.

### **Pre-hearing review**

7.—(1) A tribunal may at any time before the hearing of an originating application, on the application of a party made by notice to the Secretary or of its own motion, conduct a pre-hearing review, consisting of a consideration of –

- (a) the contents of the originating application and notice of appearance;
- (b) any representations in writing; and
- (c) any oral argument advanced by or on behalf of a party.

(2) If a party applies for a pre-hearing review and the tribunal determines that there shall be no review, the Secretary shall send notice of the determination to that party.

(3) A pre-hearing review shall not take place unless the Secretary has sent notice to the parties giving them an opportunity to submit representations in writing and to advance oral argument at the review if they so wish.

(4) If upon a pre-hearing review the tribunal considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have no reasonable prospect of success, the tribunal may make an order against that party requiring the party to pay a deposit of an amount not exceeding £500 as a condition of being permitted to continue to participate in the proceedings relating to that matter.

(5) No order shall be made under this rule unless the tribunal has taken reasonable steps to ascertain the ability of the party against whom it is proposed to make the order to comply with such an order, and has taken account of any information so ascertained in determining the amount of the deposit.

(6) An order made under this rule, and the tribunal's reasons for considering that the contentions in question have no reasonable prospect of success, shall be recorded in summary form in a document signed by the chairman. A copy of that document shall be sent to each of the parties and shall be accompanied by a note explaining that if the party against whom the order is made persists in participating in proceedings relating to the matter to which the order relates, he may have an award of costs made against him and could lose his deposit.

(7) If a party against whom an order has been made does not pay the amount specified in the order to the Secretary either –

- (a) within the period of 21 days of the day on which the document recording the making of the order is sent to him; or
- (b) within such further period, not exceeding 14 days, as the tribunal may allow in the light of representations made by that party within the said period of 21 days,

the tribunal shall strike out the originating application or notice of appearance of that party or, as the case may be, the part of it to which the order relates.

(8) The deposit paid by a party under an order made under this rule shall be refunded to him in full except where rule 12(7) applies.

(9) No member of a tribunal which has conducted a pre-hearing review shall be a member of the tribunal at the hearing of the originating application.

## **The hearing**

8.—(1) Any hearing of or in connection with an originating application shall be heard by a tribunal composed in accordance with regulation 4.

(2) Any hearing of or in connection with an originating application shall take place in public.

(3) Notwithstanding paragraph (2), a tribunal may sit in private for the purposes of –

(a) hearing evidence which in the opinion of the tribunal relates to matters of such a nature that it would be against the interests of national security, public safety or public order to allow the evidence to be given in public;

(b) hearing evidence from any person which in the opinion of the tribunal is likely to consist of –

(i) information which he could not disclose without contravening a prohibition imposed by or under any statutory provision;

(ii) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person;

(iii) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Order of 1992, cause substantial injury to any undertaking of his or any undertaking in which he works; or

(iv) information the disclosure of which would create a substantial risk that he or another individual would be subject to physical attack or sectarian harassment.

(4) If a party wishes to submit representations in writing for consideration by the tribunal at the hearing of the originating application he shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy to each other party.

(5) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Secretary less than 7 days before the hearing.

(6) Subject to rule 3(4), at any hearing of or in connection with an originating application a party may appear before a tribunal and may be heard in person or be represented by counsel or by a solicitor or by any other person whom he desires to represent him.

## **Procedure at hearing**

9.—(1) The tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall not be bound by any statutory provision or rule of law relating to the admissibility of evidence in proceedings before the courts of law. The tribunal shall make such enquiries of persons appearing before it and witnesses as it considers appropriate and shall otherwise conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Subject to paragraph (1), at the hearing of the originating application a party shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(3) If a party fails to attend or to be represented at the time and place fixed for the hearing, the tribunal may, if that party is an applicant, dismiss or, in any case, dispose of the application in the absence of that party or may adjourn the hearing to a later date; provided that before dismissing or disposing of any application in the absence of a party the tribunal shall consider his originating application or notice of appearance, any representations in writing presented by him in pursuance of rule 8(4) or (5) and any written answer furnished to the tribunal pursuant to rule 4(3).

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(4) 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**

10.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal, which may be given orally at the end of a hearing or reserved, shall be recorded in a document signed by the chairman.

(3) The tribunal shall give reasons for its decision in a document signed by the chairman. That document shall contain a statement as to whether the reasons are given in summary or extended form and where the tribunal –

- (a) makes an award of compensation; or
- (b) comes to any other determination by virtue of which one party is required to pay a sum to another (excluding an award of costs or allowances),

the document shall also contain a statement of the amount of compensation awarded, or of the sum required to be paid, followed either by a table showing how the amount or sum has been calculated or by a description of the manner in which it has been calculated.

- (4) The reasons for the decisions of the tribunal shall be given in summary form except where –
- (a) a request that the reasons be given in extended form is made orally at the hearing by a party;
  - (b) such a request is made in writing by a party after the hearing either –
    - (i) before any document recording the reasons in summary form is sent to the parties; or
    - (ii) within 21 days of the date on which that document was sent to the parties; or
  - (c) the tribunal considers that reasons given in summary form would not sufficiently explain the grounds for its decision;

and in those circumstances the reasons shall be given in extended form.

(5) The clerk shall transmit the documents referred to in paragraphs (2) and (3) to the Secretary who shall enter them in the Register and shall send a copy of the entry to each of the parties and where the proceedings were referred to the tribunal by a court, to that court.

(6) The document referred to in paragraph (3) shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs. In such a case the Secretary shall send that document to each of the parties; and where there are proceedings before a superior court relating to the decision in question, he shall send the document to that court, together with a copy of the entry in the Register of the document referred to in paragraph (2).

(7) Clerical mistakes in the documents referred to in paragraphs (2) and (3) or errors arising in those documents from an accidental slip or omission, may at any time be corrected by the chairman by certificate.

- (8) If a document is corrected by certificate under paragraph (7), or if a decision is –
- (a) revoked or varied under rule 11; or
  - (b) altered in any way by order of a superior court,

the Secretary shall alter any entry in the Register which is affected to conform with the certificate or order and send a copy of any entry so altered to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court.

(9) Where a document omitted from the Register pursuant to paragraph (6) is corrected by certificate under paragraph (7), the Secretary shall send a copy of the corrected document to the parties; and where there are proceedings before any superior court relating to the decision in question,

he shall send a copy to that court together with a copy of the entry in the Register of the document referred to in paragraph (2), if it has been altered under paragraph (8).

(10) Where this rule requires a document to be signed by the chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other members or member of the tribunal, who shall certify that the chairman is unable to sign.

### **Review of tribunal's decision**

11.—(1) Subject to the provisions of this rule, a tribunal shall have power, on the application of a party or of its own motion, to review any decision on the grounds that –

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

(2) A tribunal may not review a decision of its own motion unless it is the tribunal which issued the decision.

(3) A tribunal may only review a decision of its own motion if –

- (a) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review; and
- (b) such notice has been sent on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties.

(4) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.

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

(6) If such an application is not refused under paragraph (5) it shall be heard by the tribunal which decided the case; or –

- (a) where it is not practicable for it to be heard by that tribunal; or
- (b) where the decision was made by a chairman acting alone under rule 13(7),

by a tribunal appointed by either the President or the Vice-President.

(7) On reviewing its decision a tribunal may confirm the decision, or vary or revoke the decision; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

### **Costs**

12.—(1) Where, in the opinion of the tribunal, a party has in bringing the proceedings, or a party or a party's representative has in conducting the proceedings, acted vexatiously, abusively,

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disruptively or otherwise unreasonably, or a party's actions in bringing the proceedings have been misconceived, the tribunal shall consider making, and if it so decides, may make –

- (a) an order containing an award against that party in respect of the costs incurred by another party;
- (b) an order that that party shall pay to the Department the whole, or any part, of any allowances (other than allowances paid to members of tribunals) paid by the Department under Article 83(2) of the Order of 1998 to any person for the purposes of, or in connection with, his attendance at the tribunal.

(2) Paragraph (1) applies to a respondent who has not entered an appearance in relation to the conduct of any part in the proceedings which he has taken.

(3) An order containing an award against a party (“the first party”) in respect of the costs incurred by another party (“the second party”) shall be –

- (a) where the tribunal thinks fit, an order that the first party pay to the second party a specified sum not exceeding £10,000;
- (b) where those parties agree on a sum to be paid by the first party to the second party in respect of those costs, an order that the first party pay to the second party a specified sum, being the sum so agreed; or
- (c) in any other case, an order that the first party pay to the second party the whole or a specified part of the costs incurred by the second party as assessed by way of detailed assessment (if not otherwise agreed).

(4) Where the tribunal has on the application of a party postponed the day or time fixed for or adjourned the hearing, the tribunal may make orders, of the kinds mentioned in paragraphs (1)(a) and (b), against or, as the case may require, in favour of that party as respects any costs incurred or any allowances paid as a result of the postponement or adjournment.

(5) Any costs required by an order under this rule to be assessed by way of detailed assessment may be so assessed in the county court in accordance with such of the scales prescribed by county court rules for proceedings in the county court as shall be directed by the order.

(6) Where –

- (a) a party has been ordered under rule 7 to pay a deposit as a condition of being permitted to continue to participate in proceedings relating to a matter;
- (b) in respect of that matter, the tribunal has found against that party in its decision; and
- (c) there has been no award of costs made against that party arising out of the proceedings on the matter,

the tribunal shall consider whether to award costs against that party on the ground that he conducted the proceedings relating to the matter unreasonably in persisting in having the matter determined by a tribunal; but the tribunal shall not make an award of costs on that ground unless it has considered the document recording the order under rule 7 and is of the opinion that the reasons which caused the tribunal to find against the party in its decision were substantially the same as the reasons recorded in that document for considering that the contentions of the party had no reasonable prospect of success.

(7) Where an award of costs is made against a party who has had an order under rule 7 made against him (whether the award arises out of the proceedings relating to the matter in respect of which the order was made or out of proceedings relating to any other matter considered with that matter), his deposit shall be paid in part or full settlement of the award –

- (a) where an award is made in favour of one party, to that party; and
- (b) where awards are made in favour of more than one party, to all of them or any one or more of them as the tribunal thinks fit, and if to all or more than one, in such proportions as the tribunal considers appropriate,

and if the amount of the deposit exceeds the amount of the award of costs, the balance shall be refunded to the party who paid it.

### **Miscellaneous powers**

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

(2) A tribunal may –

- (a) if the applicant at any time gives notice of the withdrawal of his originating application, dismiss the proceedings;
- (b) if both or all the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;
- (c) subject to paragraph (3), at any stage of the proceedings, order to be struck out or amended any originating application or notice of appearance, or anything in such application or notice of appearance, on the grounds that it is misconceived, vexatious, abusive or otherwise unreasonable;
- (d) subject to paragraph (3), at any stage of the proceedings, order to be struck out any originating application or notice of appearance on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or, as the case may be, respondent has been vexatious, abusive, disruptive or otherwise unreasonable; and
- (e) subject to paragraph (3), on the application of the respondent, or of its own motion, order an originating application to be struck out for want of prosecution.

(3) Before making an order under sub-paragraph (c), (d) or (e) of paragraph (2) the tribunal shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made; but this paragraph shall not be taken to require the tribunal to send such notice to that party if the party has been given an opportunity to show cause orally why the order should not be made.

(4) Where a notice required by paragraph (3) is sent in relation to an order to strike out an originating application for want of prosecution, service of the notice shall be treated as having been effected if it has been sent by post or delivered in accordance with rule 20(3) and the tribunal may strike out the originating application (notwithstanding that there has been no direction for substituted service in accordance with rule 20(6)) if the party does not avail himself of the opportunity given by the notice.

(5) A tribunal may, before determining an application under rule 4 or rule 16, require the party making the application to give notice of it to every other party. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified for the purposes of the application by the tribunal.

(6) A chairman may postpone the day or time fixed for, or adjourn, any hearing (particularly where a statutory provision provides for conciliation in relation to the case, for the purpose of giving an opportunity for the case to be settled by way of conciliation and withdrawn) and vary any such postponement or adjournment.

(7) Any act required or authorised by these Rules to be done by a tribunal may be done by the President, the Vice-President or by a chairman except –

- (a) the hearing of an originating application under rule 8;
- (b) an act required or authorised to be so done by rule 9 or 10 which the rule implies is to be done by the tribunal which is hearing or heard the originating application;
- (c) the review of a decision under rule 11(1), and the confirmation, variation or revocation of a decision, and ordering of a re-hearing, under rule 11(7).

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(8) Any act required or authorised by rule 14 and paragraph (6) to be done by a chairman may be done by a tribunal or on the direction of the President, the Vice-President or a chairman.

(9) Any function of the Secretary may be performed by a person acting with the authority of the Secretary.

(10) Rule 12 shall apply to an order dismissing proceedings under paragraph (2)(a).

### **Extension of time**

14.—(1) A chairman may, on the application of a party or of his own motion, extend the time for doing any act appointed by or under these Rules (including this rule) and may do so whether or not the time so appointed has expired.

(2) An application under paragraph (1) shall be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(3) The Secretary shall give notice to each of the parties of any extension of time granted under this rule.

### **Devolution issues**

15.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time –

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send each of the relevant authorities a copy of the originating application and the notice of appearance.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

### **Joinder and representative respondents**

16.—(1) A tribunal may at any time, on the application of any person made by notice to the Secretary or of its own motion, direct any person against whom any relief is sought to be joined as a party, and give such consequential directions as it considers necessary.

(2) A tribunal may likewise, on such application or of its own motion, order that any respondent named in the originating application or subsequently added, who appears to the tribunal not to have been, or to have ceased to be, directly interested in the subject of the originating application, be dismissed from the proceedings.

(3) Where there are a number of persons having the same interest in an originating application, one or more of them may be cited as the person or persons against whom relief is sought, or may be authorised by the tribunal, before or at the hearing, to defend on behalf of all the persons so interested.

### **Combined proceedings**

17.—(1) Where in relation to two or more originating applications pending before the tribunal, it appears to the tribunal, on the application of a party made by notice to the Secretary or of its own motion, that –

- (a) a common question of law or fact arises in some or all the originating applications;
- (b) the relief claimed in some or all of those originating applications is in respect of or arises out of the same set of facts; or



(c) for any other reason it is desirable to make an order under this rule, the tribunal may order that some (as specified in the order) or all of the originating applications in respect of which it so appears to the tribunal shall be considered together, and may give such consequential directions as may be necessary.

(2) The tribunal shall only make an order under this rule if –

(a) each of the parties concerned has been given an opportunity at a hearing to show cause why such an order should not be made; or

(b) it has sent notice to all the parties concerned giving them an opportunity to show such cause.

(3) The tribunal may, on the application of a party made by notice to the Secretary or of its own motion, vary or set aside an order made under this rule but shall not do so unless it has given each party an opportunity to make either oral or written representations before the order is varied or set aside.

### **Complaints involving matters within the jurisdiction of industrial tribunal**

18. Before making a direction under Article 85(2) of the Order of 1998 the President or the Vice-President shall send a notice to the parties and to any other person likely to be affected by such a direction giving them an opportunity to show cause why such a direction should not be made.

### **References to the European Court of Justice**

19. Where a tribunal makes an order referring a question to the European Court of Justice for a preliminary ruling under Article 234 of the Treaty establishing the European Community, the Secretary shall send a copy of the order to the Registrar of that Court but shall not do so until the time for appealing against the order has expired or, if an appeal is made within that time, until the appeal has been determined or otherwise disposed of.

### **Notices, etc.**

20.—(1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent through a document exchange in accordance with paragraph (5), or by ordinary post (subject to paragraph (6)) or delivered to or at –

(a) in the case of a notice or document directed to the Department in proceedings to which it is not a party, the offices of the Department for Employment and Learning at Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD, or such other office as may be notified by the Department;

(b) in the case of a notice or document directed to the Attorney General for Northern Ireland pursuant to rule 15, the Attorney General's Chambers, 9 Buckingham Gate, London, SW1E 7JP;

(c) in the case of a notice or document directed to a court, the office of the clerk of the court;

(d) in the case of a notice or document directed to a party –

(i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, or in a notice under paragraph (4); or

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- (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom or, if the party is a corporate body, the body's registered or principal office in the United Kingdom, or, in any case, such address or place outside the United Kingdom as the President or the Vice-President may allow;
- (e) in the case of a notice or 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 the person is a corporate body, the body's registered or principal office in the United Kingdom,

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

(4) A party may at any time by notice to the Secretary and to the other party or parties change the address to which notices and documents are to be sent.

(5) Where –

- (a) the proper address for service of any notice or document required or authorised by these Rules to be sent or given to any person includes a numbered box at a document exchange; or
- (b) there is inscribed on the writing paper of the party on whom the notice or document is to be served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the notice or document that he is unwilling to accept service through a document exchange,

service of the notice or document may be effected by leaving it addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any notice or document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(6) In any case he considers appropriate, the President or the Vice-President may direct that there shall be substituted service in such manner as he may deem fit.

## SCHEDULE 2

Regulations 5(b), 6(1) and 7(2)(b)

### RULES OF PROCEDURE: APPEALS

#### **Notice of appeal**

1.—(1) An appeal, as referred to in Article 15 (in relation to directions), 62(7) or 63(5) (in relation to a notice of refusal) of the Order of 1998, shall be commenced by the appellant sending to the Secretary a notice of appeal which shall be in writing and shall set out, where applicable –

- (a) the name and address of the appellant and, if different, an address within the United Kingdom to which he requires notices and documents relating to the appeal to be sent;
- (b) the date of the notice containing the directions;
- (c) particulars of the directions appealed against; and
- (d) the grounds of the appeal.

### **Duty of the Secretary upon receipt of notice of appeal**

2. Upon receiving a notice of appeal the Secretary shall –
  - (a) enter the following details in the Register, namely –
    - (i) the case number;
    - (ii) the date the Secretary received the notice of appeal;
    - (iii) the name and address of the appellant;
    - (iv) the place where the appeal is to be held;
    - (v) the fact that the appeal is an appeal against a direction under Article 15, 62(7) or 63(5) of the Order of 1998;
  - (b) send a copy of the notice of appeal to the Commission; and
  - (c) 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 shall be sent.

### **Power to require attendance of witnesses and production of documents, etc.**

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

- (a) require a party to furnish in writing to the other party further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) require one party to grant to another such discovery or inspection (including the taking of copies) of documents as might be granted by a county court; or
- (c) require the attendance of any person in Northern Ireland, including a party, either to give evidence or to produce documents or both,

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) Every document containing a requirement under paragraph (1)(b) or (c) shall contain a reference to the fact that under Article 84(9) and (10) of the Order of 1998 any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine and if without reasonable excuse the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine for each day on which the failure continues and the document shall state the amounts of the current maximum fines.

- (3) Where a requirement has been imposed under paragraph (1) –
  - (a) on a party in his absence; or
  - (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.

- (4) If a requirement under paragraph (1) is not complied with, the tribunal –
  - (a) may make an order in respect of costs under rule 9(1); or
  - (b) before or at the hearing, may strike out the whole or part of the notice of appeal,

but a tribunal shall not exercise its powers under this paragraph unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal

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should not do so, or the party has been given an opportunity to show cause orally why the powers conferred by this paragraph should not be exercised.

### **Time and place of hearing**

4.—(1) The President or the Vice-President shall fix the date, time and place of the hearing of the appeal and the Secretary 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 together with 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 the Vice-President so directs, the Secretary shall also send notice of the hearing to such persons as may be directed, but the requirements as to the period of notice contained in paragraph (1) shall not apply to any such notices.

### **The hearing**

5.—(1) Any hearing of an appeal shall be heard by a tribunal composed in accordance with regulation 4.

(2) Any hearing of or in connection with an appeal shall take place in public.

(3) Notwithstanding paragraph (2), a tribunal may sit in private for the purposes of –

- (a) hearing evidence which in the opinion of the tribunal relates to matters of such a nature that it would be against the interests of national security, public safety or public order to allow the evidence to be given in public;
- (b) hearing evidence from any person which in the opinion of the tribunal is likely to consist of –
  - (i) information which he could not disclose without contravening a prohibition imposed by or under any statutory provision;
  - (ii) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person;
  - (iii) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Order of 1992, cause substantial injury to any undertaking of his or any undertaking in which he works; or
  - (iv) information the disclosure of which would create a substantial risk that he or another individual would be subject to physical attack or sectarian harassment.

(4) If a party wishes to submit representations in writing for consideration by the tribunal at the hearing of the appeal, he shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy to each other party.

(5) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Secretary less than 7 days before the hearing.

(6) At any hearing of or in connection with an appeal a party may appear before a tribunal and may be heard in person or be represented by counsel or by a solicitor or by any other person whom he desires to represent him.

### **Procedure at hearing**

6.—(1) At any hearing of or in connection with an appeal a party shall be entitled to make an opening statement, to give evidence, 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 pursuant to rule 5(4) or (5).

(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**

7.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal, which may be given orally at the end of a hearing or reserved, shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

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

(4) 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.

(5) Clerical mistakes in the document referred to in paragraph (2) or errors arising in that document from an accidental slip or omission, may at any time be corrected by the chairman by certificate.

(6) If any document is corrected by a certificate under paragraph (5) or a decision is –

- (a) reviewed, revoked or varied under rule 8; or
- (b) altered in any way by order of a superior court,

the Secretary 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 and, where the proceedings were referred to the tribunal by a court, to that court.

(7) Where a document omitted from the Register pursuant to paragraph (4) is corrected by certificate under paragraph (5), the Secretary shall send a copy of the corrected document to the parties; and where there are proceedings before any superior court relating to the decision in question, he shall send a copy to that court together with a copy of the entry in the Register of the document referred to in paragraph (2), if it has been altered under paragraph (6).

(8) Where this rule requires a document to be signed by the chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other members or member of the tribunal, who shall certify that the chairman is unable to sign.

### **Review of tribunal's decision**

8.—(1) Subject to the provisions of this rule, a tribunal shall have power on the application of a party or of its own motion, to review any decision on the grounds that –

- (a) the decision was wrongly made as a result of an error on the part of the staff of the Office of the Tribunals;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;

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- (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 at the time of the hearing; or
  - (e) the interests of justice require such a review.
- (2) A tribunal may not review a decision of its own motion unless it is the tribunal which issued the decision.
- (3) A tribunal may only review a decision of its own motion if –
- (a) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review; and
  - (b) such notice has been sent on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties.
- (4) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.
- (5) An application for the purposes of paragraph (1) may be refused by the President, the Vice-President or by the chairman of the tribunal which decided the case if in his opinion it has no reasonable prospect of success and he shall state the reasons for his opinion.
- (6) If such an application is not refused under paragraph (5) it shall be heard by the tribunal which decided the case; or –
- (a) where it is not practicable for it to be heard by that tribunal; or
  - (b) where the decision was made by a chairman acting alone under rule 10(5),
- by a tribunal appointed by either the President or the Vice-President.
- (7) On reviewing its decision a tribunal may confirm the decision, or vary or revoke the decision; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

### **Costs**

9.—(1) A tribunal may make an order that a party shall pay to the other party either a specified sum being the sum agreed between them in respect of the costs of or in connection with an appeal incurred by that other party or, in default of agreement, the amount of those costs as assessed by way of detailed assessment.

(2) Where the tribunal has on the application of a party postponed the day or time fixed for or adjourned the hearing, the tribunal may make an order of the kind mentioned in paragraph (1), against or, as the case may require, in favour of that party as respects any costs incurred or any allowances paid as a result of the postponement or adjournment.

(3) Any costs required by an order under this rule to be assessed by way of detailed assessment may be so assessed in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as shall be directed by the order.

### **Miscellaneous powers**

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

(2) A tribunal may –

- (a) make any necessary amendments to the description of a party in the Register and in other documents relating to the appeal;

- (b) if the appellant shall at any time give notice of the abandonment of his appeal, dismiss the appeal;
- (c) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;
- (d) on the application of the Commission, or of its own motion, order to be struck out any notice of appeal for want of prosecution: Provided that before making any such order the tribunal shall send notice to the appellant giving him an opportunity to show cause why such an order should not be made.

(3) Subject to rule 3(3), a tribunal may, if it thinks fit, before granting an application under rule 3 or 11 require the party making the application to give notice of it to the other party. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made being an address and time specified for the purposes of the application by the tribunal.

(4) A chairman may postpone the day or time fixed for, or adjourn, any hearing and vary any such postponement or adjournment.

(5) Any act required or authorised by these Rules to be done by a tribunal may be done by the President, the Vice-President or by a chairman except –

- (a) the hearing of an appeal under rule 5;
- (b) an act required or authorised to be done by rule 6 or 7 which the rule implies is to be done by the tribunal which is hearing or has heard the appeal;
- (c) the review of a decision under rule 8(1), and the confirmation, variation or revocation of a decision, and ordering of a re-hearing, under rule 8(7).

(6) Any act required or authorised by rule 11 and paragraph (4) to be done by a chairman may be done by a tribunal or on the direction of the President, the Vice-President or a chairman.

(7) Rule 9 shall apply to an order dismissing proceedings under paragraph (2)(b).

### **Extension of time and directions**

11.—(1) A chairman may, on the application of a party or of his own motion, extend the time for doing any act appointed by or under these Rules (including this rule) and may do so whether or not the time so appointed has expired.

(2) A tribunal may at any time, on the application of a party or of its own motion, give such directions on any matter arising in connection with the proceedings as appear to the tribunal to be appropriate.

(3) An application under paragraph (1) or (2) shall be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(4) The Secretary shall give notice to each of the parties of any extension of time granted or any directions given under this rule.

### **Devolution issues**

12.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time –

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send each of the relevant authorities a copy of the notice of appeal.

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(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

#### **Notices, etc.**

13.—(1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent through a document exchange in accordance with paragraph (5), or by ordinary post (subject to paragraph (6)) or delivered to or at –

- (a) in the case of a notice or document directed to the Department in proceedings to which it is not a party, the offices of the Department for Employment and Learning at Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD, or such other office as may be notified by the Department;
- (b) in the case of a notice or document directed to the Attorney General for Northern Ireland pursuant to rule 12, the Attorney General's Chambers, 9 Buckingham Gate, London, SW1E 7JP;
- (c) in the case of a notice or document directed to a court, the office of the clerk of the court;
- (d) in the case of a notice or document directed to a party –
  - (i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, or in a notice under paragraph (4); or
  - (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom or, if the party is a corporate body, the body's registered or principal office in the United Kingdom, or, in any case, such address or place outside the United Kingdom as the President or the Vice-President may allow;
- (e) in the case of a notice or 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 the person is a corporate body, the body's registered or principal office in the United Kingdom;

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

(4) A party may at any time by notice to the Secretary and to the other party change the address to which notices and documents are to be sent.

(5) Where –

- (a) the proper address for service of any notice or document required or authorised by these Rules to be sent or given to any person includes a numbered box at a document exchange; or
- (b) there is inscribed on the writing paper of the party on whom the notice or document is to be served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the notice or document that he is unwilling to accept service through a document exchange,

service of the notice or document may be effected by leaving it addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day



to that exchange; and any notice or document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(6) In any case he considers appropriate, the President or the Vice-President may direct that there shall be substituted service in such manner as he may deem fit.

## SCHEDULE 3

Regulations 5(c), 6(1) and 7(2)(c)

### RULES OF PROCEDURE: ENFORCEMENT

#### **Application for enforcement**

1. An application for enforcement shall be made by the Commission presenting to the Secretary a notice of application for enforcement which shall be in writing and shall set out –

- (a) the name of the Commission and its address for the service of documents;
- (b) the name and address of the respondent;
- (c) the date and particulars of the undertaking or directions; and
- (d) the grounds for the application.

#### **Duty of the Secretary upon receipt of a notice of application for enforcement**

2.—(1) Upon receiving a notice of application for enforcement the Secretary shall –

- (a) enter particulars of it in the Register including –
  - (i) the case number;
  - (ii) the date the Secretary received the relevant documents;
  - (iii) the name and address of the Commission; and
  - (iv) the name and address of the respondent;
- (b) send a copy of it to the respondent; and
- (c) give every party notice in writing of the case number of the application (which shall constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary shall be sent.

#### **Application to enforce, revoke or vary a tribunal order**

3.—(1) An application to the tribunal –

- (a) under Article 16(7)(b) of the Order of 1998 for the enforcement of an order under Article 16(3)(a) of that Order; or
- (b) under Article 16(8)(a) of the Order of 1998 for the revocation or variation of the terms of an order under Article 16(3) of that Order,

shall be made by presenting a notice to the Secretary.

(2) Upon receiving a notice under paragraph (1) the Secretary shall forthwith send a copy to the parties (other than the party making the application).

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### **Power to require further particulars and attendance of witnesses and to grant discovery**

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

- (a) require a party to furnish in writing to the person specified by the tribunal further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) require one party to grant to another such discovery or inspection (including the taking of copies) of documents as might be granted by a county court; or
- (c) require the attendance of any person in Northern Ireland, including a party, either to give evidence or to produce documents or both;

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) Every document containing a requirement under paragraph (1)(b) or (c) shall contain a reference to the fact that under Article 84(9) and (10) of the Order of 1998 any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine and if without reasonable excuse the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine for each day on which the failure continues and the document shall state the amounts of the current maximum fines.

(3) Where a requirement has been imposed under paragraph (1) –

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may apply to the tribunal by notice to the Secretary to vary or set aside the requirement. Such notice shall be given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with, and the Secretary shall give notice of the application to each party, or where applicable, each party other than the party making the application.

(4) If a requirement under paragraph (1) is not complied with, the tribunal –

- (a) may make an order in respect of costs under rule 9(1); or
- (b) before or at the hearing, may strike out the whole or part of the notice of application for enforcement,

but a tribunal shall not exercise its powers under this paragraph unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the tribunal should not do so, or the party has been given an opportunity to show cause orally why the powers conferred by this paragraph should not be exercised.

### **Time and place of hearing**

5.—(1) Subject to Article 16(4)(c) of the Order of 1998, the President or the Vice-President shall fix the date, time and place of any hearing related to an application for enforcement and the Secretary 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 the Vice-President so directs, the Secretary shall also send notice of the hearing to such persons as may be directed, but the requirements as to the period of notice contained in paragraph (1) shall not apply to any such notices.

## **The hearing**

6.—(1) Any hearing of an application for enforcement shall be heard by a tribunal composed in accordance with regulation 4.

(2) Any hearing of or in connection with an application for enforcement shall take place in public.

(3) Notwithstanding paragraph (2), a tribunal may sit in private for the purposes of –

(a) hearing evidence which in the opinion of the tribunal relates to matters of such a nature that it would be against the interests of national security, public safety or public order to allow the evidence to be given in public;

(b) hearing evidence from any person which in the opinion of the tribunal is likely to consist of –

(i) information which he could not disclose without contravening a prohibition imposed by or under any statutory provision;

(ii) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person;

(iii) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Order of 1992, cause substantial injury to any undertaking of his or any undertaking in which he works; or

(iv) information the disclosure of which would create a substantial risk that he or another individual would be subject to physical attack or sectarian harassment.

(4) If a party wishes to submit representations in writing for consideration by the tribunal at the hearing related to an application for enforcement he shall present his representations to the Secretary not less than 7 days before the hearing and shall at the same time send a copy to each other party.

(5) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Secretary less than 7 days before the hearing.

(6) Subject to Article 16(4)(c) of the Order of 1998, at any hearing related to an application for enforcement, a party–

(a) may appear before a tribunal and may be heard in person or be represented by counsel or by a solicitor or by any other person whom he desires to represent him;

(b) shall be entitled to make an opening statement, to give evidence, to call witnesses, to cross-examine any witnesses called by the other party and to address the tribunal.

(7) If a party shall fail to appear or to be represented at the time and place fixed for any hearing, the tribunal may, subject to Article 17 of the Order of 1998, dispose of the matter in the absence of that party or may adjourn the hearing to a later date; provided that before disposing of such a matter in the absence of a party the tribunal shall consider any representations submitted by that party pursuant to paragraph (4) or (5).

(8) 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**

7.—(1) Where a tribunal is composed of three members its decision may be taken by a majority; and if a tribunal is composed of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal which may be given orally at the end of a hearing or reserved shall be recorded in a document signed by the chairman which shall specify the reasons for the decision.

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(3) The clerk shall send the document referred to in paragraph (2) to the Secretary who shall enter it in the Register and shall send a copy of the entry to each of the parties.

(4) The reasons for the decision shall be omitted from the Register in any case in which –

- (a) evidence has been heard in private and the tribunal so directs; or
- (b) the tribunal on the application of the applicant so directs on the ground that disclosure will be contrary to his interests,

and in that event a specification of the reasons shall be sent to each of the parties, and to any superior court in any proceedings relating to the decision, together with the copy of the entry in the Registry of the document referred to in paragraph (3).

(5) Clerical mistakes in the document referred to in paragraph (2) or errors arising in that document from an accidental slip or omission, may at any time be corrected by the chairman by certificate.

(6) If a document is corrected by certificate under paragraph (5) or if a decision is –

- (a) reviewed, varied or revoked under rule 8; or
- (b) altered in any way by order of a superior court,

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

(7) Where a document omitted from the Register pursuant to paragraph (4) is corrected by certificate under paragraph (5), the Secretary shall send a copy of the corrected document to each of the parties; and where there are proceedings before any superior court relating to the decision in question, he shall send a copy to that court together with a copy of the entry in the Register of the document referred to in paragraph (2), if it has been altered under paragraph (6).

(8) Where this rule requires a document to be signed by the chairman of a tribunal composed of three or two persons, but by reason of death or incapacity the chairman is unable to sign it, the document shall be signed by the other members or member of the tribunal, who shall certify that the chairman is unable to sign.

### **Review of tribunal's decision**

8.—(1) Subject to the provisions of this rule, a tribunal shall have power on the application of a party or of its own motion to review any decision on the grounds that –

- (a) the decision was wrongly made as a result of an error on the part of the staff of the Office of the Tribunals;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (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 at the time of the hearing; or
- (e) the interests of justice require such a review.

(2) A tribunal may not review a decision of its own motion unless it is the tribunal which issued the decision.

(3) A tribunal may only review a decision of its own motion if –

- (a) it has sent notice to each of the parties explaining in summary form the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to show cause why there should be no review; and

(b) such notice has been sent on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties.

(4) An application for the purposes of paragraph (1) may be made at the hearing. If no application is made at the hearing, an application may be made to the Secretary on or after the date of the hearing, but within 14 days of the date on which the decision was sent to the parties. Such application must be in writing and must state the grounds in full.

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

(6) If such an application is not refused under paragraph (5) it shall be heard by the tribunal which decided the case; or –

(a) where it is not practicable for it to be heard by that tribunal; or

(b) where the decision was made by a chairman acting alone under rule 10(5),

by a tribunal appointed by either the President or the Vice-President.

(7) On reviewing its decision a tribunal may confirm the decision, or vary or revoke the decision; and if it revokes the decision, the tribunal shall order a re-hearing before either the same or a differently constituted tribunal.

### **Costs**

9.—(1) A tribunal may make an order that a party shall pay to the other party either a specified sum being the sum agreed between them in respect of the costs of or in connection with the proceedings incurred by that other party or, in default of agreement, the amount of those costs as assessed by way of detailed assessment.

(2) Where a tribunal has on the application of a party to the proceedings postponed the day or time fixed for or adjourned the hearing, the tribunal may make an order of the kind mentioned in paragraph (1) against or, as the case may require, in favour of that party as respects any costs incurred or any allowances paid as a result of the postponement or adjournment.

(3) Any costs required by an order under this rule to be assessed by way of detailed assessment may be so assessed in accordance with such of the scales prescribed by county court rules for proceedings in the county court as shall be directed by the order.

### **Miscellaneous powers**

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

(2) A tribunal may –

(a) make any necessary amendments to the description of a party in the Register and in other documents;

(b) if the Commission shall at any time give notice of the abandonment of its application for enforcement, dismiss the application;

(c) if the parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;

(d) on the application of the respondent, or of its own motion, order to be struck out any application for enforcement for want of prosecution; provided that before making any such order the tribunal shall send notice to the Commission giving it an opportunity to show cause why such an order should not be made.

(3) Subject to rule 4(3), a tribunal may, if it thinks fit, before granting an application under rule 4 or 11 require the party making the application to give notice of it to every other party. The notice

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shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made being an address and time specified for the purposes of the application by the tribunal.

(4) A chairman may postpone the day or time fixed for, or adjourn, any hearing and vary any such postponement or adjournment.

(5) Any act required or authorised by these Rules to be done by a tribunal may be done by the President, the Vice-President or by a chairman except –

- (a) the hearing of an application for enforcement;
- (b) any act required or authorised to be so done by rule 6 or 7 which the rule implies is to be done by the tribunal which is hearing or has heard the application for enforcement;
- (c) the review of a decision under rule 8(1) and the confirmation, variation or revocation of a decision, and ordering of a re-hearing under rule 8(7).

(6) Any act required or authorised by rule 11 and paragraph (4) to be done by a chairman may be done by a tribunal or on the direction of the President, the Vice-President or a chairman.

(7) Rule 9 shall apply to an order dismissing proceedings under paragraph (2)(b).

#### **Extension of time and directions**

11.—(1) A chairman may, on the application of a party or of his own motion, extend the time for doing any act appointed by or under these Rules (including this rule) and may do so whether or not the time so appointed has expired.

(2) A tribunal may at any time, on the application of a party or of its own motion, give such directions on any matter arising in connection with the proceedings as appear to the tribunal to be appropriate.

(3) An application under paragraph (1) or (2) shall be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(4) The Secretary shall give notice to each of the parties of any extension of time granted or any directions given under this rule.

#### **Devolution issues**

12.—(1) In any proceedings in which a devolution issue arises, the Secretary shall as soon as reasonably practicable by notice inform each of the relevant authorities thereof (unless the person to whom notice would be given is a party to the proceedings) and shall at the same time –

- (a) send a copy of the notice to the parties to the proceedings; and
- (a) send each of the relevant authorities a copy of the notice of appeal.

(2) A person to whom notice is given in pursuance of paragraph (1) may within 14 days of receipt thereof by notice to the Secretary take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

#### **Notices, etc.**

13.—(1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent through a document exchange in accordance with paragraph (5), or by ordinary post (subject to paragraph (6)) or delivered to or at –

- (a) in the case of a notice or document directed to the Department in proceedings to which it is not a party, the offices of the Department for Employment and Learning at Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD, or such other office as may be notified by the Department;
- (b) in the case of a notice or document directed to the Attorney General for Northern Ireland pursuant to rule 12, the Attorney General’s Chambers, 9 Buckingham Gate, London, SW1E 7JP;
- (c) in the case of a notice or document directed to a court, the office of the clerk of the court;
- (d) in the case of a notice or document directed to a party –
  - (i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, or in a notice under paragraph (4); or
  - (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom or, if the party is a corporate body, the body’s registered or principal office in the United Kingdom, or, in any case, such address or place outside the United Kingdom as the President or the Vice-President may allow;
- (d) in the case of a notice or 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 the person is a corporate body, the body’s registered or principal office in the United Kingdom,

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

(4) A party may at any time by notice to the Secretary and to the other party change the address to which notices and documents are to be sent.

(5) Where –

- (a) the proper address for service of any notice or document required or authorised by these Rules to be sent or given to any person includes a numbered box at a document exchange; or
- (b) there is inscribed on the writing paper of the party on whom the notice or document is to be served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the notice or document that he is unwilling to accept service through a document exchange,

service of the notice or document may be effected by leaving it addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any notice or document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(6) In any case he considers appropriate, the President or the Vice-President may direct that there shall be substituted service in such manner as he may deem fit.

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## SCHEDULE 4

Regulation 10

## REVOCATIONS

(1) <i>Regulations revoked</i>	(2) <i>References</i>
Fair Employment Tribunal Regulations (Northern Ireland) 1989	<a href="#">S.R. 1989 No. 444.</a>
Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 1989	<a href="#">S.R. 1989 No. 445.</a>
The Fair Employment Tribunal (Rules of Procedure) (Amendment) Regulations (Northern Ireland) 1999	<a href="#">S.R. 1999 No. 452.</a>

**EXPLANATORY NOTE**

*(This note is not part of the Regulations.)*

These Regulations revoke and replace the Fair Employment Tribunal Regulations (Northern Ireland) 1989, the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 1989, and subsequent amending Regulations prescribing Rules of Procedure for the Fair Employment Tribunal in Northern Ireland. In addition to minor and drafting amendments, re-numbering and the updating of statutory and other references, these Regulations make the following changes of substance.

Regulation 2 contains new provisions in paragraphs (5) to (8) setting out how time limits in the Regulations and in documents issued under them are to be calculated. Examples are given for interpretation of the general rules. Regulations 3 and 4 make provision in relation to the establishment and composition of the Fair Employment Tribunal. Regulation 5 specifies circumstances in which the Schedules to these Regulations may be applied. Regulation 6 specifies an overriding objective to enable tribunals to deal with cases justly. Regulation 9 contains a transitional provision stating that the new regulations apply in respect of all cases, irrespective of when they were commenced. Regulation 10 revokes the Regulations listed in Schedule 4.

Schedule 1 contains rules of procedure which apply to complaints of unlawful discrimination under Article 38 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (“the Order”). Rules 1 and 3 provide that more than one originating application or notice of appearance may be presented in a single document. Rule 4 concerns the management of cases and includes provision at paragraph (2) that directions may relate in particular to evidence, including witness statements. Failure to comply with a direction may lead to the penalties specified in paragraph (8). Rule 7 is new and allows the tribunal to require a deposit of up to £500 following a pre-hearing review.

Rule 12(1) of Schedule 1 (costs) is amended to provide that certain specified conduct by a party’s representative may be taken into account when awarding costs against that party. The tribunal is also now under a duty to consider an award of costs in the circumstances described in rule 12(1), and these include circumstances where proceedings which have no reasonable prospect of success have been pursued. In rule 12(3), the maximum amount of costs which a tribunal may award without an



assessment of costs is set at £10,000. Rule 12(6) now enables the tribunal to have regard, in awarding costs, to those who proceed unreasonably with a case after being required to pay a deposit following a pre-hearing review. In rule 13(2) of Schedule 1 (miscellaneous powers), in sub-paragraphs (c) and (d) respectively, the term “frivolous” has been replaced with “misconceived” (defined in regulation 2(2)) and “unreasonable”. Those paragraphs permit the tribunal to strike out applications or notices of appearance in certain circumstances.

Rule 15 is new and provides for the Secretary of the Office of the Industrial Tribunals and the Fair Employment Tribunal to give notice to certain persons, including the Attorney General for Northern Ireland, in any proceedings in which a devolution issue arises. Rule 20 (Notices, etc.) provides for the service of notices.

Schedule 2 contains rules of procedure which apply to appeals against directions given by the Equality Commission for Northern Ireland (“the Commission”) and to appeals against a refusal by the Commission to cancel a notice of non-qualification for public contracts or financial assistance from a Northern Ireland department.

Schedule 3 contains rules of procedure which apply to proceedings on applications by the Commission under Article 16(1) of the Order for enforcement of undertakings or directions given under that Order, the Fair Employment (Northern Ireland) Act 1989 or the Fair Employment (Northern Ireland) Act 1976.

Schedule 3 also applies to proceedings before the Tribunal to enforce, revoke or vary an order of the Tribunal made on an application under section 16(1) of the Fair Employment (Northern Ireland) Act 1989.