

1984 No. 40

INDUSTRIAL TRIBUNALS

Industrial Tribunals (Rules of Procedure) (Equal Value Amendment) Regulations (Northern Ireland) 1984

Made 14th February 1984

Coming into operation 15th March 1984

The Department of Economic Development(a), in exercise of the powers conferred on it by Article 59 of the Industrial Relations (Northern Ireland) Order 1976(b) 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 Industrial Tribunals (Rules of Procedure) (Equal Value Amendment) Regulations (Northern Ireland) 1984 and shall come into operation on 15th March 1984.

Interpretation

2. In these Regulations—

“the Equal Pay Act” means the Equal Pay Act (Northern Ireland) 1970(c), as amended, with particular reference to the amendments made by the Equal Pay (Amendment) Regulations (Northern Ireland) 1984(d);

“the principal Regulations” means the Industrial Tribunals (Rules of Procedure) Regulations (Northern Ireland) 1981(e);

“the principal Rules of Procedure” means the Rules of Procedure contained in the Schedule to the principal Regulations;

and, any expression to which a meaning has been assigned by Regulation 2 of the principal Regulations shall have that meaning.

Proceedings of tribunals in cases involving equal value claims

3. In any proceedings before a tribunal involving a claim by an applicant which rests upon entitlement to the benefit of an equality clause by virtue of the operation of section 1(2)(c) of the Equal Pay Act—

(a) the principal Regulations shall have effect in relation to that claim subject to the amendments contained in Part I of the Schedule; and

(b) the principal Rules of Procedure shall have effect in relation to that claim subject to the amendments contained in Part II of the Schedule.

(a) Formerly the Department of Manpower Services: *see* S.I. 1982/846 (N.I. 11) Article 3

(b) S.I. 1976/1043 (N.I. 16); Article 59 was amended by Schedule 4 to the Industrial Relations (No. 2) (Northern Ireland) Order 1976 (S.I. 1976/2147 (N.I. 28)). Article 3 of the Labour Relations Agency (Additional Functions) Order 1977 (S.I. 1977/177), Schedule 2 to the Industrial Relations (Northern Ireland) Order 1982 (S.I. 1982/578 (N.I. 8)) and by Regulation 3 of the Equal Pay (Amendment) Regulations (Northern Ireland) 1984 (S.R. 1984 No. 16)

(c) 1970 c. 32 (N.I.)

(d) S.R. 1984 No. 16

(e) S.R. 1981 No. 188

Sealed with the Official Seal of the Department of Economic Development for
Northern Ireland on 14th February 1984.

(L.S.)

Trevor Pearson

Assistant Secretary

SCHEDULE

Regulation 3

PART I

Amendments to the Principal Regulations

1. In Regulation 2 (interpretation)—

(a) after the definition of “Department” there shall be inserted—

“ “the Equal Pay Act” means the Equal Pay Act (Northern Ireland) 1970(a), as amended, with particular reference to the amendments made by the Equal Pay (Amendment) Regulations (Northern Ireland) 1984(b);

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

“expert” means a member of the panel of independent experts within the meaning of section 2A(4) of the Equal Pay Act;” and

(b) after the definition of “Register” there shall be inserted—

“ “report” means a report required by a tribunal to be prepared by an expert, pursuant to section 2A(1)(b) of the Equal Pay Act;”.

PART II

Amendments to the Principal Rules of Procedure

1.—(1) In Rule 4, after paragraph (1), there shall be inserted—

“(1A) Subject to paragraph (1B), in a case involving an equal value claim, a tribunal may, on the application of an expert who has been required by the tribunal to prepare a report,—

(a) require any person who the tribunal is satisfied may have information which may be relevant to the question or matter on which the expert is required to report, to furnish, in writing, such information as the tribunal may require;

(b) require any person to produce any documents which are in the possession, custody or power of that person and which the tribunal is satisfied may contain matter relevant to the question on which the expert is required to report;

and any information so required to be furnished or document so required to be produced shall be furnished or produced, at or within such time as the tribunal may appoint, to the Secretary of the Tribunals who shall send the information or document to the expert.

(1B) A tribunal shall not make a requirement under paragraph (1A)—

(a) of the Labour Relations Agency which has acted in connection with the complaint under Article 64 of the Sex Discrimination (Northern Ireland) Order 1976(c), or

(b) if it is satisfied that the person so required would have good grounds for refusing to comply with the requirement if it were a requirement made in connection with a hearing before the tribunal.”.

(2) In Rule 4, after paragraph (2), there shall be inserted—

“(2A) A person, whether or not a party to the proceedings, upon whom a requirement has been made under paragraph (1A), may apply to the tribunal by notice to the Secretary of the Tribunals before the appointed time at or within which the requirement is to be complied with to vary or set aside the requirement. Notice of such application shall be given to the parties and to the expert upon whose application the requirement was made.”.

(3) In paragraph (3) of Rule 4, after the words “(1)(iii)”, there shall be inserted the words, “or paragraph (1A)”.

(a) 1970 c. 32 (N.I.)

(b) S.R. 1984 No. 16

(c) S.I. 1976/1042 (N.I. 15)

2. After Rule 7, there shall be inserted—

“7A.—(1) In any case involving an equal value claim where a dispute arises as to whether any work is of equal value to other work in terms of the demands made on the person employed on the work (for instance under such headings as effort, skill and decision) (in this Rule hereinafter referred to as “the question”), a tribunal shall, before considering the question, except in cases to which section 2A(1)(a) of the Equal Pay Act applies, require an expert to prepare a report with respect to the question: and the requirement shall be made in accordance with paragraphs (2) and (3).

(2) The requirement shall be made in writing and shall set out—

- (a) the name and address of each of the parties;
- (b) the address of the establishment at which the applicant is (or, as the case may be, was) employed;
- (c) the question; and
- (d) the identity of the person with reference to whose work the question arises

and a copy of the requirement shall be sent to each of the parties.

(3) The requirement shall stipulate that the expert shall—

- (a) take account of all such information supplied and all such representations made to him as have a bearing on the question;
- (b) before drawing up his report, produce and send to the parties a written summary of the said information and representations and invite the representations of the parties upon the material contained therein;
- (c) make his report to the tribunal in a document which shall reproduce the summary and contain a brief account of any representations received from the parties upon it, any conclusion he may have reached upon the question and the reasons for that conclusion or, as the case may be, for his failure to reach such a conclusion;
- (d) take no account of the difference of sex and at all times act fairly.

(4) Without prejudice to the generality of Rule 12(2)(b), where a tribunal requires an expert to prepare a report, it shall adjourn the hearing.

(5) If, on the application of one or more of the parties made not less than 42 days after a tribunal has notified an expert of the requirement to prepare a report, the tribunal forms the view that there has been or is likely to be undue delay in receiving that report, the tribunal may require the expert to provide in writing to the tribunal an explanation for the delay or information as to his progress and may, on consideration of any such explanation or information as may be provided and after seeking representations from the parties, revoke, by notice in writing to the expert, the requirement to prepare a report; and in such a case paragraph (1) shall again apply.

(6) Where a tribunal has received the report of an expert, it shall forthwith send a copy of the report to each of the parties and shall fix a date for the hearing of the case to be resumed: provided that the date so fixed shall be at least 14 days after the date on which the report is sent to the parties.

(7) Upon the resuming of the hearing of the case in accordance with paragraph (6) the report shall be admitted as evidence in the case unless the tribunal has exercised its power under paragraph (8) not to admit the report.

(8) Where the tribunal, on the application of one or more of the parties or otherwise, forms the view—

- (a) that the expert has not complied with a stipulation in paragraph (3), or
- (b) that the conclusion contained in the report is one which, taking due account of the information supplied and representations made to the expert, could not reasonably have been reached, or
- (c) that for some other material reason (other than disagreement with the conclusion that the applicant's work is or is not of equal value or with the reasoning leading to that conclusion) the report is unsatisfactory,

the tribunal may, if it thinks fit, determine not to admit the report; and in such a case paragraph (1) shall again apply.

(9) In forming its view on the matters contained in paragraph (8)(a), (b) and (c), the tribunal shall take account of any representations of the parties thereon and may in that connection, subject to Rule 8(2A) and (2B), permit any party to give evidence upon, to call witnesses and to question any witness upon any matter relevant thereto.

(10) The tribunal may, at any time after it has received the report of an expert, require that expert (or, if that is impracticable, another expert) to explain any matter contained in his report or, having regard to such matters as may be set out in the requirement, to give further consideration to the question.

(11) The requirement in paragraph (10) shall comply with paragraph (2) and shall stipulate that the expert shall make his reply in writing to the tribunal, giving his explanation or, as the case may be, setting down any conclusion which may result from his further consideration and his reasons for that conclusion.

(12) Where the tribunal has received a reply from the expert under paragraph (11), it shall forthwith send a copy of the reply to each of the parties and shall allow the parties to make representations thereon; and the reply shall be treated as information furnished to the tribunal and be given such weight as the tribunal thinks fit.

(13) Where a tribunal has determined not to admit a report under paragraph (8), that report shall be treated for all purposes (other than the award of costs or expenses under Rule 11) connected with the proceedings as if it had not been received by the tribunal and no further account shall be taken of it; and the requirement on the expert to prepare a report shall lapse."

3.—(1) In paragraph (1) of Rule 8, at the beginning, there shall be inserted the words "Subject to paragraphs (2A), (2B), (2C), (2D) and (2E),".

(2) In paragraph (2) of Rule 8, for the words "paragraph (1)" there shall be substituted the words "paragraphs (1), (2A), (2B), (2C) and (2D)".

(3) In Rule 8, after paragraph (2), there shall be inserted—

"(2A) The tribunal may, and shall upon the application of a party, require the attendance of an expert who has prepared a report in connection with an equal value claim in any hearing relating to that claim. Where an expert attends in compliance with such requirement any party may, subject to paragraph (1), cross-examine the expert on his report and on any other matter pertaining to the question on which the expert was required to report.

(2B) In a case involving an equal value claim, at any time after the tribunal has received the report of the expert, any party may, on giving reasonable notice of his intention to do so to the tribunal and to any other party to the claim, call one witness to give expert evidence on the question on which the tribunal has required the expert to prepare a report; and where such evidence is given, any other party may cross-examine the person giving that evidence upon it.

(2C) Except as provided in Rule 7A(9) or by paragraph (2D), no party to a case involving an equal value claim may give evidence upon, or question any witness upon, any matter of fact upon which a conclusion in the report of the expert is based.

(2D) Subject to paragraphs (2A) and (2B), a tribunal may, notwithstanding paragraph (2C), permit a party to give evidence upon, to call witnesses and to question any witness upon any such matters of fact as are referred to in that paragraph if either—

(a) the matter of fact is relevant to and is raised in connection with the issue contained in subsection (3) of section 1 of the Equal Pay Act (defence of genuine material factor) upon which the determination of the tribunal is being sought; or

(b) the report of the expert contains no conclusion on the question of whether the applicant's work and the work of the person identified in the requirement of the tribunal under Rule 7A(2) are of equal value and the tribunal is satisfied that the absence of that conclusion is wholly or mainly due to the refusal or deliberate omission of a person required by the tribunal under Rule 4(1A) to furnish information or to produce documents to comply with that requirement.

(2E) In a case involving an equal value claim, a tribunal may, on the application of a party, if in the circumstances of the case, having regard to the considerations expressed in paragraph (1), it considers that it is appropriate so to proceed, hear evidence upon and permit the parties to address it upon the issue contained in subsection (3) of section 1 of the Equal Pay Act (defence of genuine material factor) before it requires an expert to prepare a

report under Rule 7A. Where the tribunal so proceeds, it shall be without prejudice to further consideration of that issue after the tribunal has received the report.”.

4.—(1) In paragraph (2) of Rule 9, at the end, there shall be inserted the words “and in a case involving an equal value claim there shall be appended to that document a copy of the report (if any) of an expert received by the tribunal in the course of the proceedings.”.

(2) In paragraph (3) of Rule 9, after the words “the chairman” there shall be inserted the words “and any report appended to the document pursuant to paragraph (2)”, and for the word “it” there shall be substituted the word “them”.

(3) In Rule 9, after paragraph (4), there shall be inserted—

“(4A) In any case involving an equal value claim where evidence has been heard in private, any matter bearing upon the substance of that evidence contained in any report of an expert may, if the tribunal so directs, be omitted from the report appended to the document pursuant to paragraph (2), and in that event a copy of the report without that omission shall be sent to any superior court in any proceedings relating to the decision on the case, together with a copy of the entry.”.

5.—(1) In paragraph (1)(b) of Rule 11, after the word “tribunals” there shall be inserted the word “, experts”.

(2) In Rule 11, after paragraph (1), there shall be inserted—

“(1A) For the purposes of paragraph (1)(a), in a case involving an equal value claim, the costs or expenses in respect of which a tribunal may make an order include costs or expenses incurred by the party in whose favour the order is to be made in or in connection with the investigations carried out by the expert in preparing his report.”.

6.—(1) In Rule 12, after paragraph (2) there shall be inserted—

“(2A) Without prejudice to the generality of paragraph (2)(b), in a case involving an equal value claim the tribunal shall, before proceeding to hear the parties on the claim, invite them to apply for an adjournment for the purpose of seeking to reach a settlement of the claim and shall, if both or all the parties agree to such a course, grant an adjournment for that purpose.

(2B) If, in a case involving an equal value claim, after the tribunal has adjourned the hearing under Rule 7A(4) but before the tribunal has received the report of the expert, the applicant gives notice under paragraph (2)(c), the tribunal shall forthwith notify the expert that the requirement to prepare a report has ceased. The notice shall be without prejudice to the operation of Rule 11(1A).”.

(2) In paragraph (3) of Rule 12, after the words “Rule 4(2)” there shall be inserted the words “and (2A)”, after the word “Department” there shall be inserted the words “or, in the case of an application under Rule 4(1A), the expert” and after the word “parties”, there shall be inserted the words “(or, in the case of an application by an expert, the parties and any other person in respect of whom the tribunal is asked, in the application, to impose a requirement)”.

7.—(1) In paragraph (4) of Rule 16, after the word “Agency” there shall be inserted the words “and the appropriate expert”.

(2) In paragraph (5)(b) of Rule 16, after the words “Rule 4(1)(iii)” there shall be inserted the words “or (1A)”.

(3) In paragraph (9) of Rule 16, the words “(Northern Ireland) 1970(a)” and the footnote pertaining thereto shall be deleted.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Industrial Tribunals (Rules of Procedure) Regulations (Northern Ireland) 1981 so as to provide the additional procedure to be followed where a claim is brought before an industrial tribunal involving section 1(2)(c) of the Equal Pay Act (Northern Ireland) 1970 (as amended by the Equal Pay (Amendment) Regulations (Northern Ireland) 1984). The principal changes made include:—

- (a) provision relating to the duty of the tribunal to require an expert to prepare a report on the question whether jobs have equal value and for admitting or not admitting that report in evidence (Rule 7A);
- (b) provision for the tribunal to require the supply of information and the production of documents for the use of the expert and for appeal from such a requirement (Rule 4(1A) and (2A));
- (c) provision for the expert to be cross-examined by the parties (Rule 8(2A); for the tribunal to question the expert further in writing (Rule 7A(10) and (11)); and for expert evidence to be adduced by the parties (Rule 8(2B));
- (d) provision for the report of the expert to be attached to the document recording the decision of the tribunal (Rule 9(2)).