

THE INDUSTRIAL TRIBUNALS

**MAKING AN APPEAL AGAINST AN
IMPROVEMENT, PROHIBITION OR
ENFORCEMENT NOTICE**

PROCEDURAL GUIDE

What Are Industrial Tribunals?

The Industrial Tribunals are independent judicial bodies set up to hear and resolve certain matters of dispute in the employment field. A tribunal usually comprises a legally qualified Chairman and two lay members currently appointed by the Department for Employment and Learning. To date, lay panel members have been selected after consultation with bodies representing employees and employers. Future panel member appointments will be made through a full public appointment process. Once appointed, panel members remain totally independent. The Industrial Tribunals sit mainly in Belfast but from time to time in provincial centres such as Omagh, Londonderry, Strabane, Limavady and Enniskillen.

How Do I Appeal?

A person wishing to appeal against an improvement notice, a prohibition notice or an enforcement notice can do so by sending to the Office of the Tribunals a notice of appeal which must include the following:

- (a) the name and address of the appellant and, if different, an address to which he requires notices and documents to be sent;
- (b) the date of the notice appealed against and the address of the premises or place concerned;
- (c) the name and address of the respondent;
- (d) details of the requirements or directions which are being appealed; and
- (e) the grounds for appeal.

What Is The Time Limit For Bringing An Appeal?

The notice of appeal must be sent to the Office of the Tribunals within 21 days from the date of the service on the appellant of the notice appealed against. A tribunal may extend the time mentioned above where it is satisfied, on an application made in writing to the Secretary either before or after the expiration of that time, that it is or was not reasonably practicable for an appeal to be brought within that time.

Can I Have The Notice Suspended?

When an appeal is brought against a prohibition or enforcement notice, the appellant may also make an application to a tribunal for a direction suspending the operation of the prohibition or enforcement notice until the appeal is determined or withdrawn. The application must be made to the Secretary of the Tribunal in writing and should include the case number of the appeal and the grounds on which the application is made. The office will send out a copy of the application to the respondent who will have an opportunity to submit representations in writing within not less than 7 days. A Chairman will consider the application and any representations submitted by the respondent and order the operation of the notice to be suspended, or dismiss the appellant's application or order the application to be determined at a hearing.

What Happens To My Appeal?

On receiving the notice of appeal, the Office of the Tribunals will enter the details of the appeal in the Register (the case number, date received, the name of the appellant and the respondent); send a copy of the notice of appeal to the respondent; and inform the parties in writing of the case reference number and of the address to which notices and other communications to the office of the tribunal should be sent. The case reference number should be quoted in all future correspondence with the tribunals on the matter.

Appointment Of An Assessor

The President or Vice President may, if he thinks fit, appoint a person having special knowledge or experience in relation to the subject matter of the appeal, to sit with the tribunal as an assessor.

When Will My Appeal Be Heard?

You will be given at least 14 days' notice of the date, time and place of the hearing or such shorter notice as may be agreed by the Secretary with the parties.

What If I Need A Postponement?

Save in exceptional circumstances, a request for a postponement will not be considered unless the party making a request has obtained the consent of the other party to the proceedings and valid reasons are shown. Every request for a postponement should confirm the consent of such party to postponement or state the objections to it. The tribunal will also consider at that stage how near the request is to the date of hearing and if the date of hearing was agreed by the parties.

Do I Need To Attend The Hearing?

It is generally in your interests to appear or be represented at the hearing. At the hearing, you can put your case in person or be represented by any person you wish to represent you, for example a representative of your trade or employers association. If you are not present or represented at the hearing, at the time and place notified, the tribunal may decide the case in your absence after considering any written representations which you may have submitted.

What Will Happen At The Hearing?

A tribunal will decide if your appeal is well founded at, or following, a hearing at which you and the person or body against whom you are appealing may attend and speak. Where you are in dispute about matters of fact and there are other persons who have personal knowledge of these matters of fact, you may arrange for these persons to attend as witnesses to support your case. They will be required to give evidence on oath or affirmation. If you wish someone to give

evidence on your behalf, you should arrange for them to attend the hearing. If they are unwilling or if there is some difficulty, you should write to the tribunal at least 10 days in advance of the hearing asking for an Order requiring them to attend.

Similarly, if you want the other side to bring any relevant documents to the hearing, you should ask them to do so. If they refuse you can apply to the tribunal for an Order to make them produce the documents.

You may also if necessary ask the tribunal to order that:-

- (i) The other party should furnish further particulars (which must be on specified points) about the case;
- (ii) Documents in the possession of the other party should be produced for your inspection.

You may, if you wish, send written representations to the tribunal setting out the facts and the arguments on which you intend to rely. These should be sent to the Secretary of the Tribunals at least 7 days before the hearing. At the same time you should send a copy to the other party or parties.

Can I Withdraw My Appeal?

An appellant may withdraw their appeal at any time, either orally at hearing or in writing to the Office of the Tribunals. Without a written notification of withdrawal, the tribunal may proceed to hear your appeal, even in your absence.

How Will I Know The Decision Of A Tribunal?

At the end of the hearing, the tribunal will either issue any decision orally or will reserve the decision to be given in writing at a later date. In every case, the parties will receive a copy of the tribunal's decision.

Can I Appeal A Tribunal Decision?

You have the right to appeal to the Court of Appeal against the tribunal's decision only on a point of law. A requisition to state a case must be lodged with the Secretary of the Tribunals within 6 weeks of the date the decision is sent to you and must set out the precise point of law involved in the decision with which you are dissatisfied.

Can I Ask For A Review Of A Tribunal Decision?

In certain circumstances, the tribunal may review its decision and change or revoke it, if a party shows the decision was wrongly made as a result of an administrative error; or that a party did not receive a notice of the proceedings leading to the decision; or that the decision was made in the absence of a party; or that since the decision was made, new evidence had become available and the existence of that evidence could not have been reasonably known or

foreseen; or that the interests of justice require such a review. If you think you have grounds for asking for the decision to be reviewed, you may apply to the tribunal at the hearing immediately after the decision has been given. Alternatively, you may send a written request for a review to the Secretary of the Tribunals stating your reasons in full, not later than 14 days from the date on which the tribunal's decision is entered in the register (as shown on the copy sent to you).

Who Covers The Cost?

Each party at a hearing should meet their own expenses to the extent that they are not payable out of public funds. You will not have to pay any of the other party's costs merely because you lose your case. However, the tribunal may make an order that a party make a payment in respect of the costs incurred by another party.

Is The Hearing In Public?

The hearing will normally be in public but the tribunal has power to direct that the hearing shall be in private in certain circumstances as described in the rules.

What If I Have A Disability Or Special Needs?

If you (or a person required to attend a tribunal) have a particular need because of a disability, you should advise the tribunal office so that they can provide any assistance that you may require. Examples of the help that the office can provide include converting documents to Braille and arrangement/payment for sign language interpreters. Please contact the office as soon as possible so they can help you.

How Do I Make A Complaint?

If you wish to bring anything to the tribunal office's attention, their complaints procedure is outlined in the leaflet "Putting Things Right". This is available at the Office of the Tribunals or can be obtained by contacting them by telephone (028) 9032 7666. You can also contact the Customer Services Manager by telephone (028) 9025 0065 or by email: mail@employmenttribunalsni.org

General

Any communication including notification of change of address should be made to the Secretary, whose address is at the head of the appeal form. If you require full details of the procedure of the tribunal, you should consult the following statutory instrument (which you can buy from The Stationery Office, Belfast).

The Industrial Tribunals (Improvement and Prohibition Notices Appeals) Rules of Procedure 1996 - contained in the IT (Constitution and Rules of Procedure) Regulations (NI) 1996 SR 1996 No 173 ISBN 0-337-92133-4 £7.55 Nett.

Address:

Office of the Industrial Tribunals and The Fair Employment Tribunal

Killymeal House

2 Cromac Quay

Belfast

BT7 2JD

Tel: (028) 9032 7666

Fax: (028) 9025 0100

Email: mail@employmenttribunalsni.org

Notices Under REACH

Under the REACH Enforcement Regulations 2008, HSENI Inspectors are able to issue three kinds of notice; namely, an improvement notice, a prohibition notice and an enforcement notice. All three are legally distinct from notices served under the Health and Safety at Work (Northern Ireland) Order 1978, but the improvement notice and prohibition notice operate in a similar way to those served under the 1978 Order, and the method of appeal is the same. Therefore, all references in this booklet to 'improvement' or 'prohibition' notices should be treated as referring to the REACH versions as well. There is no equivalent to the 'enforcement notice' in the 1978 Order and therefore all references in this booklet to an 'enforcement' notice should be treated as referring to REACH only. The method of appeal for an enforcement notice is the same as for a prohibition notice.