

SCHEDULE 4

Regulation 16(3)(b)

THE EMPLOYMENT TRIBUNALS (HEALTH AND SAFETY – APPEALS AGAINST IMPROVEMENT AND PROHIBITION NOTICES) RULES OF PROCEDURE *For use only in proceedings in an appeal against an improvement or prohibition notice*

Application of Schedule 1

1. Subject to rules 11 and 12 of this Schedule, Schedule 1 shall apply to appeals against an improvement notice or a prohibition notice. The rules in this Schedule modify the rules in Schedule 1 in relation to such appeals. If there is conflict between the rules contained in this Schedule and those in Schedule 1, the rules in this Schedule shall prevail.

Definitions

2. In this Schedule and in relation to proceedings to which this Schedule applies —
- “Health and Safety Act” means the Health and Safety at Work etc. Act 1974(1);
 - “improvement notice” means a notice under section 21 of the Health and Safety Act;
 - “inspector” means a person appointed under section 19(1) of the Health and Safety Act;
 - “prohibition notice” means a notice under section 22 of the Health and Safety Act; and
 - “respondent” means the inspector who issued the improvement notice or prohibition notice which is the subject of the appeal.

Notice of appeal

3. A person wishing to appeal an improvement notice or a prohibition notice (the appellant) shall do so by sending to the Employment Tribunal Office two copies of 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 relating to the appeal to be sent;
- (b) the date of the improvement notice or prohibition notice appealed against and the address of the premises or the 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 the appeal.

Time limit for bringing appeal

4.—(1) Subject to paragraph (2), the notice of appeal must be sent to the Employment Tribunal Office within 21 days from the date of the service on the appellant of the notice appealed against.

(2) A tribunal may extend the time mentioned above where it is satisfied, on an application made in writing to the Secretary 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.

Action on receipt of appeal

5. On receiving the notice of appeal the Secretary shall —
- (a) send a copy of the notice of appeal to the respondent; and

(1) 1974 c. 37.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) inform the parties in writing of the case number of the appeal (which must from then on be referred to in all correspondence relating to the appeal) and of the address to which notices and other communications to the Employment Tribunal Office shall be sent.

Application for a direction suspending the operation of a prohibition notice

6.—(1) When an appeal is brought against a prohibition notice, an application may be made by the appellant under section 24(3)(b) of the Health and Safety Act for a direction suspending the operation of the prohibition notice until the appeal is determined or withdrawn. The application must be presented to the Employment Tribunal Office in writing and shall include —

- (a) the case number of the appeal, or if there is no case number sufficient details to identify the appeal; and
- (b) the grounds on which the application is made.

(2) The Secretary shall send a copy of the application to the respondent as soon as practicable after it has been received and shall inform the respondent that he has the opportunity to submit representations in writing if he so wishes, within a specified time but not less than 7 days.

(3) The chairman shall consider the application and any representations submitted by the respondent, and may —

- (a) order that the application should not be determined separately from the full hearing of the appeal;
- (b) order that the operation of the prohibition notice be suspended until the appeal is determined or withdrawn;
- (c) dismiss the appellant's application; or
- (d) order that the application be determined at a Hearing (held in accordance with rule 26 of Schedule 1).

(4) The chairman must give reasons for any decision made under paragraph (3) or made following a Hearing ordered under paragraph (3)(d).

(5) A decision made under paragraph (3) or made following a Hearing ordered under paragraph (3)(d) shall be treated as a decision which may be reviewed upon the application of a party under rule 34 of Schedule 1.

General power to manage proceedings

7.—(1) The chairman may at any time on the application of a party, make an order in relation to any matter which appears to him to be appropriate. Such orders may be those listed in rule 10(2) of Schedule 1 (subject to rule 11 below) or such other orders as he thinks fit. Subject to the case management rules in Schedule 1, orders may be issued as a result of a chairman considering the papers before him in the absence of the parties, or at a hearing (see regulation 2 for the definition of "hearing").

(2) If the parties agree in writing upon the terms of any decision to be made by the tribunal or chairman, the chairman may, if he thinks fit, decide accordingly.

Appointment of an assessor

8. The President, Vice President or a Regional Chairman may, if he thinks fit, appoint in accordance with section 24(4) of the Health and Safety Act a person having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal or chairman as an assessor.

Right to withdraw proceedings

9.—(1) An appellant may withdraw all or part of the appeal at any time. This may be done either orally at a hearing or in writing in accordance with paragraph (2).

(2) To withdraw an appeal or part of one in writing the appellant must inform the Employment Tribunal Office in writing of the appeal or the parts of it which are to be withdrawn.

(3) The Secretary shall inform all other parties of the withdrawal. Withdrawal takes effect on the date on which the Employment Tribunal Office (in the case of written notifications) or the tribunal or chairman receives notice of it and where the whole appeal is withdrawn proceedings are brought to an end against the respondent on that date and the tribunal or chairman shall dismiss the appeal.

Costs and expenses

10.—(1) A tribunal or chairman may make an order (“a costs order”) that a party (“the paying party”) make a payment in respect of the costs incurred by another party (“the receiving party”).

(2) For the purposes of paragraph (1) “costs” shall mean fees, charges, disbursements, expenses or remuneration incurred by or on behalf of a party in relation to the proceedings. In Scotland all references in this Schedule to costs or costs orders shall be read as references to expenses or orders for expenses.

(3) The amount of a costs order against the paying party can be determined in the following ways —

- (a) the tribunal may specify the sum which the party must pay to the receiving party, provided that sum does not exceed £10,000;
- (b) the parties may agree on a sum to be paid by the paying party to the receiving party and if they do so the costs order shall be for the sum so agreed;
- (c) the tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the second party with the amount to be paid being determined by way of detailed assessment in a County Court in accordance with the Civil Procedure Rules or, in Scotland, as taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order.

(4) The tribunal or chairman shall have regard to the paying party’s ability to pay when considering whether it or he shall make a costs order or how much that order should be.

(5) For the avoidance of doubt, the amount of a costs order made under either paragraph (4)(b) or (c) may exceed £10,000.

Provisions of Schedule 1 which do not apply to appeals against improvement notices or prohibition notices

11. The following rules in Schedule 1 shall not apply in relation to appeals against improvement and prohibition notices: rules 1 to 9, 10(1), 10(2)(g), (i), (k), (l) and (r), 12, 13, 16(1)(c), 18(2)(c) and (e), 18(8), 20 to 25, 29(3), 33, 34(1)(a), 34(2), 38 to 47, 49 to 53, 55, and 61(4)(a), (7) and (8). All references in Schedule 1 to the rules listed in this rule shall have no effect in relation to an appeal against an improvement notice or a prohibition notice.

Modification of Schedule 1

12. Schedule 1 shall be further modified so that all references in Schedule 1 to a claim shall be read as references to a notice of appeal or to an appeal against an improvement notice or a prohibition notice, as the context may require, and all references to the claimant shall be read as references to the appellant in such an appeal.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.