**THE INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL**

**PRESIDENTIAL DIRECTION ISSUED UNDER REGULATION 14 OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL (CONSTITUTION AND RULES OF PROCEDURE) REGULATIONS (NORTHERN IRELAND) 2020 AND PRESIDENTIAL GUIDANCE ISSUED UNDER RULE 8 OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2020**

Further to the Presidential Guidance dated 20 March 2020, 27 March 2020, 11 June 2020, 7 July 2020 and 20 January 2021 and having regard to:-

1. Public Health Guidance and the continued need to limit the scope of any risks to health during the Coronavirus (Covid-19) pandemic;

2. the need to maintain the administration of justice; and

3. the overriding objective to deal with cases fairly and justly, which includes so far as practicable:-

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense; and

(f) the requirement for parties and their representatives to assist the tribunal to further the overriding objective and in particular to co-operate generally with each other and with the tribunal;

the President provides the following background information, makes the following direction and issues the following updated guidance.

**Background Information**

The Tribunals’ building was closed from 27 March 2020 until 8 July 2020, when it was reopened, following the completion of a Risk Assessment to safely manage the return to the Tribunals’ building for the purposes of conducting the work of the Industrial and Fair Employment Tribunals. On 19 January 2021, the Secretary to the Tribunals, following the Department for the Economy authorising her to do so, closed the Tribunals’ building until at least the 5February 2021, subject to the completion of a new Risk Assessment.

**Updated Information**

The Secretary has informed the President that she is not yet in a position to provide an indicative date as to when the Department can safely reopen the Tribunals’ building but that it is unlikely to be reopened until at least 1 March 2021 and only then if it is safe to do so. The Secretary is currently updating the Risk Assessment to take account of the revised Public Health Agency advice and any additional mitigations that may be needed to re-open the Tribunals’ building safely. The Secretary has informed the President that this is a significant and substantial piece of work.

**Guidance on the Way Forward**

Although the Tribunals’ building will be closed until at least 1 March 2021, the Industrial Tribunals and Fair Employment Tribunal will continue to conduct their judicial functions during this period of closure on a remote basis.

The Industrial Tribunals and Fair Employment Tribunal will continue to conduct:-

1. Case Management Preliminary Hearings; and

2. Progress Review Preliminary Hearings;

by electronic means.

The Industrial Tribunals and Fair Employment Tribunal will also continue to conduct:-

1. Reconsideration Hearings in respect of rejection of claims and responses;

2. Preliminary Hearings to consider and determine Preliminary Issues;

3. Final Hearings on liability and remedy;

4. Submissions Hearings;

5. Costs Hearings; and

6. Reconsideration Hearings;

by electronic means, where it is appropriate to do so and in accordance with the overriding objective, subject to the Department for the Economy being able to facilitate this on behalf of the judiciary and subject to the participants having the necessary equipment and connectivity to enable them to take part.

The Department is in the process of installing video conferencing equipment in the Tribunals’ building. This equipment will require to be tested before being commissioned for use in hearings. Parties whose hearings have been listed to take place on a hybrid basis should note that the conduct of such hearings is dependent upon the completion of the installation and successful commissioning of that equipment.

The Tribunals’ Secretariat will continue to carry out its work and the Employment Judges will continue to carry out their other judicial work on a remote basis while the Tribunals’ building remains closed.

**Presidential Direction**

Review Case Management Preliminary Hearings will take place in all cases that have been listed for in person hearings up to and including the 26 February 2021, to consider whether:-

1. those hearings can proceed by electronic means; or

2. those hearings should be postponed and relisted;

having due regard to the overriding objective, the views of the parties and the following:-

1. whether the claim is contested; and

2. if the claim is contested:-

(a) the complexity and the number of legal issues to be determined;

(b) whether it can be determined by legal submissions only;

(c) the number and nature of any factual disputes between the parties;

(d) the extent to which oral evidence will be required;

(e) the number of witnesses who will be called;

(f) the circumstances of parties and witnesses, including whether reasonable adjustments/special arrangements are necessary to ensure their effective participation;

(g) the volume of documents to which the Tribunal will be referred; and

(h) the date when the claim was presented.

WebEx is the online conferencing facility currently used by the Tribunals. Guidance on the use of WebEx is available on the Tribunals’ website.

**This Guidance will be subject to ongoing review.**

**President: Eileen McBride CBE**

**4 February 2021**