

*Draft Regulations laid before Parliament under section 41(2) of the Employment Tribunals Act 1996  
for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2023 No. (L.)**

**EMPLOYMENT TRIBUNALS**

**The Employment Tribunals and Employment Appeal  
Tribunal (Composition of Tribunal) Regulations 2023**

*Made - - - - - \*\*\*  
Coming into force in accordance with regulation 1(1)*

The Lord Chancellor makes these Regulations in exercise of the powers conferred by sections 4(4), (7) and (8), 28(3), (6) and (7), and 41(4) of the Employment Tribunals Act 1996(1).

In accordance with section 41(2) of that Act, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

In accordance with sections 4(11) and 28(10) of that Act, the Lord Chancellor has consulted the Senior President of Tribunals.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Employment Tribunals and Employment Appeal Tribunal (Composition of Tribunal) Regulations 2023 and come into force on the day after the day on which they are made.

(2) These Regulations extend to England and Wales, and Scotland.

**Interpretation**

2. In these Regulations, “direction” means a direction made under section 7A or 29A of the Employment Tribunals Act 1996(2).

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- (1) 1996 c. 17. Sections 4 and 28 were substituted by section 35 of the Judicial Review and Courts Act 2022 (c. 35). Section 41 was amended by section 12(4) of the Enterprise and Regulatory Reform Act 2013 (c. 24), section 150(5) of the Small Business, Enterprise and Employment Act 2015 (c. 26), and section 35(4) of, and paragraph 25 of Schedule 5 to, the Judicial Review and Courts Act 2022 (c. 35). The amendments made by section 35(4) of and paragraph 25 of Schedule 5 to the Judicial Review and Courts Act 2022 are being brought into force by regulations 2(b) and (f) of the Judicial Review and Courts Act 2022 (Commencement No. 4) Regulations 2023 which will be made before this instrument is laid before Parliament. There are amendments to sections 4, 28 and 41 not relevant to these Regulations.
- (2) Section 7A was added by section 27 of the Employment Act 2002 (c. 22) and amended by paragraph 41 of Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), and paragraphs (1) and (2) of Schedule 4 and paragraph 3 of Schedule 5 to the Judicial Review and Courts Act 2022 (c. 35). Section 29A was added by paragraph 47 of Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 and amended by paragraph (3) of Schedule 4 and paragraph 18 of Schedule 5 to the Judicial

### **Number of members of an employment tribunal**

3.—(1) The number of members of the tribunal who are to decide any matter that may fall to be decided by an employment tribunal must be determined by the Senior President of Tribunals in a direction in accordance with paragraphs (2) and (3).

(2) The Senior President of Tribunals must determine whether the tribunal is to consist of one, two or three members in relation to any given matter.

(3) The Senior President of Tribunals must have regard to—

(a) the nature of the matter that falls to be decided and the means by which it is to be decided; and

(b) the need for members of tribunals to have particular expertise, skills or knowledge.

(4) The power delegated to the Senior President of Tribunals by paragraph (2) may be exercised by the Senior President of Tribunals for different purposes in connection with different cases or matters or classes of cases or matters.

### **Number of members of the Appeal Tribunal**

4.—(1) The number of members of the Tribunal who are to decide any matter that falls to be decided by the Appeal Tribunal is one, unless determined otherwise under paragraph (2).

(2) The Tribunal may consist of two or three members if the Senior President of Tribunals so determines in a direction in relation to any given matter.

(3) The power delegated to the Senior President of Tribunals by paragraph (2) may be exercised by the Senior President of Tribunals for different purposes in connection with different cases or matters or classes of cases or matters.

### **Tribunal consisting of a single member**

5.—(1) Where a matter in the employment tribunal is to be decided by a single member, it must be decided by an Employment Judge.

(2) Where a matter in the Appeal Tribunal is to be decided by a single member, it must be decided by a judge of that tribunal.

### **Tribunal consisting of two or more members**

6.—(1) Subject to paragraph (2), where a matter in the employment tribunal or Appeal Tribunal, as the case may be, is to be decided by more than one member, the number of members who are to be judges and the number of members who are not judges must be determined by the Senior President of Tribunals in a direction.

(2) At least one of the members must be a judge.

(3) Without prejudice to regulations 8(2)(b) and (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013<sup>(3)</sup> or, as the case may be, section 22(2) of the Employment Tribunals Act 1996<sup>(4)</sup>, the Senior President of Tribunals may in a direction in accordance with regulation 3(1) or, as the case may be, regulation 4(2), determine whether members who are not judges must have any qualifications and, if so, what those qualifications must be.

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Review and Courts Act 2022. The amendments made by the Judicial Review and Courts Act 2022 mentioned in this footnote are not being brought into force by the Judicial Review and Courts Act 2022 (Commencement No. 4) Regulations 2023 because that is not necessary for the operation of this instrument.

(3) [S.I. 2013/1237](#). Regulation 8 was amended by regulation 3 of [S.I. 2020/1003](#).

(4) Section 22 was amended by paragraph 246 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c. 4), paragraph 11 of Schedule 14 to the Crime and Courts Act 2013 (c. 22), and section 1(5) of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(4) The Senior President of Tribunals must select one of the members (the “presiding member”) to chair the tribunal.

(5) If the decision of the tribunal is not unanimous, the decision of the majority is the decision of the tribunal; and the presiding member has a casting vote if the votes are equally divided.

(6) In this regulation, “judge” means an Employment Judge as it applies to the employment tribunal and as it applies to the Appeal Tribunal a judge of that tribunal.

(7) In paragraphs (4) and (5), “tribunal” includes a Tribunal of the Appeal Tribunal.

### **Amendments of the Employment Appeal Tribunal Rules 1993**

7.—(1) The Employment Appeal Tribunal Rules 1993<sup>(5)</sup> are amended as follows.

(2) In rule 3 (institution of appeal)—

(a) in paragraph (7)—

- (i) for “a judge” substitute “the Appeal Tribunal”;
- (ii) for “he shall notify” substitute “the Appeal Tribunal or the Registrar shall notify”;
- (iii) for “his opinion” substitute “its opinion”;

(b) in paragraph (7ZA)—

- (i) in both instances in which it occurs, for “a judge” substitute “the Appeal Tribunal”;
- (ii) for “the judge” substitute “the Appeal Tribunal”;

(c) in paragraph (10)—

- (i) for “the judge or Registrar for his” substitute “the Appeal Tribunal or Registrar for their”;
- (ii) for “a judge who” substitute “the Appeal Tribunal which”.

(3) In rule 6—

(a) in paragraph (12)—

- (i) for “a judge” substitute “the Appeal Tribunal”;
- (ii) for “he shall notify” substitute “the Appeal Tribunal or the Registrar shall notify”;
- (iii) for “his opinion” substitute “its opinion”;

(b) in paragraph (12A)—

- (i) in both instances in which it occurs, for “a judge” substitute “the Appeal Tribunal”;
- (ii) for “the judge” substitute “the Appeal Tribunal”;

(c) in paragraph (16)—

- (i) for “the judge” substitute “the Appeal Tribunal”;
- (ii) for “a judge who” substitute “the Appeal Tribunal which”.

(4) In rule 20 (disposal of interim applications)—

(a) in paragraph (2)—

- (i) for “President or a judge” substitute “Appeal Tribunal”;
- (ii) for “President or judge who” substitute “Appeal Tribunal, which”;
- (iii) omit “himself or refer it in whole or part to the Appeal Tribunal as required to be constituted by section 28 of the 1996 Act”;
- (iv) after the words “with such directions as”, for “he” substitute “it”;

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(5) [S.I. 1993/2854](#). Relevant amending instruments are [S.I. 2001/1128](#), [2004/2526](#), [2013/1693](#), and [2022/932](#).

- (b) in each of paragraphs (3) and (4), for the words from and including “President” to the end substitute “Appeal Tribunal”.
- (5) In rule 21(1) (appeals from registrar), for the words from and including “a judge” to the end substitute “the Appeal Tribunal”.
- (6) In rule 29(1) (oral hearings), omit the words after “public”.
- (7) In rule 33 (review of decisions and correction of errors)—
  - (a) in paragraph (3), for “a judge or member” substitute “the Appeal Tribunal”;
  - (b) omit paragraph (4).

### **Amendment of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**

8.—(1) The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013(6) are amended as follows.

- (2) In regulation 8(4) (panels of members for tribunals), omit the words from “and may select” to the end.
- (3) Omit regulation 9 (composition of tribunals).
- (4) In regulation 10 (national security proceedings – panel of members and composition of tribunals), omit paragraph (2).
- (5) In Schedule 1 (the employment tribunals rules of procedure)—
  - (a) in rule 1 (interpretation)—
    - (i) in paragraph (1), after the definition of “President” insert—
 

““presiding member” means a member selected by the Senior President of Tribunals in accordance with regulation 6(4) of the Employment Tribunals and Employment Appeal Tribunal (Composition of Tribunal) Regulations 2023;”;
    - (ii) omit paragraph (2);
  - (b) in rule 13 (reconsideration of rejection)—
    - (i) in paragraph (3)—
      - (aa) for “an Employment Judge” substitute “the Tribunal”, and
      - (bb) for “the Judge” substitute “the Tribunal”;
    - (ii) in paragraph (4), for “Judge” substitute “Tribunal”;
  - (c) in rule 19 (reconsideration of rejection)—
    - (i) in paragraph (3)—
      - (aa) for “an Employment Judge” substitute “the Tribunal”, and
      - (bb) for “the Judge” substitute “the Tribunal”;
    - (ii) in paragraph (4)—
      - (aa) for “a Judge” substitute “the Tribunal”, and
      - (bb) for “the Judge” substitute “the Tribunal”;
  - (d) in rule 20(3) (applications for extension of time for presenting response), for “An Employment Judge” substitute “The Tribunal”;
  - (e) in rule 21(2) (effect of non-presentation or rejection of response, or case not contested)—

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(6) [S.I. 2013/1237](#). The relevant amending instrument is [S.I. 2020/1003](#). There are other amendments not relevant to these Regulations.

- (i) for “An Employment Judge” substitute “The Tribunal”;
- (ii) for “a Judge”, in each place it appears, substitute “the Tribunal”;
- (iii) for “the Judge” substitute “the Tribunal”;
- (iv) after the words “shall be fixed” omit “before a Judge alone”;
- (f) in rule 26 (initial consideration)—
  - (i) in paragraph (1)—
    - (aa) for “Employment Judge” substitute “Tribunal”,
    - (bb) for “the Tribunal” substitute “it”,
    - (cc) for “the jurisdiction of the Tribunal” substitute “its jurisdiction”, and
    - (dd) omit “the Judge”;
  - (ii) in paragraph (2), for “the Judge” substitute “the Tribunal”;
- (g) in rule 27 (dismissal of claim (or part))—
  - (i) in paragraph (1)—
    - (aa) for “Employment Judge” substitute “Tribunal”, and
    - (bb) in both instances in which it occurs, for “the Tribunal” substitute “it”;
  - (ii) in sub-paragraph (1)(a), for “the Judge’s” substitute “the Tribunal’s”;
  - (iii) in paragraph (3), for “an Employment Judge” substitute “the Tribunal”;
  - (iv) in paragraph (4), for “the Judge” substitute “the Tribunal”;
- (h) in rule 28 (dismissal of response (or part))—
  - (i) in paragraph (1), for “Employment Judge” substitute “Tribunal”;
  - (ii) in sub-paragraph (1)(a), for “Judge’s” substitute “Tribunal’s”;
  - (iii) in paragraph (3), for “an Employment Judge” substitute “the Tribunal”;
  - (iv) in paragraph (4), for “the Judge” substitute “the Tribunal”;
- (i) in rule 36(1) (lead cases), omit “or the President”;
- (j) omit rule 49 (majority decisions);
- (k) omit rule 55 (constitution of tribunal for preliminary hearings);
- (l) in rule 60 (decisions made without a hearing), for “Employment Judge who has” substitute “member or members of the Tribunal who have”;
- (m) in rule 61(3) (decisions made at or following a hearing), for “Employment Judge” substitute “presiding member”;
- (n) in rule 62 (reasons), in both places where it occurs, for “Employment Judge” substitute “presiding member”;
- (o) in rule 63 (absence of employment judge)—
  - (i) in the title, for “Employment Judge” substitute “Presiding Member”;
  - (ii) for “Employment Judge” substitute “presiding member”;
  - (iii) for “full tribunal” substitute “tribunal composed of more than one member”;
- (p) in rule 69 (correction of clerical mistakes and accidental slips)—
  - (i) for “An Employment Judge” substitute “The Tribunal”;
  - (ii) for “Judge” substitute “presiding member of the Tribunal that made the correction”;
- (q) in rule 72 (process)—

- (i) in paragraph (1)—
  - (aa) for “An Employment Judge” substitute “The Tribunal”,
  - (bb) for “the Judge” substitute “the Tribunal”, and
  - (cc) for “Judge’s” substitute “Tribunal’s”;
- (ii) in paragraph (2), for “Employment Judge” substitute “Tribunal”;
- (iii) omit paragraph (3);
- (r) in rule 78(1)(b) (the amount of a costs order), in both instances in which it occurs, for “an Employment Judge” substitute “the Tribunal”;
- (s) in rule 89 (substituted service), for “President, Vice President or a Regional Employment Judge” substitute “Tribunal”;
- (t) in rule 97 (collective agreements)—
  - (i) in paragraph (b), for “an Employment Judge” substitute “the Tribunal”;
  - (ii) in both places where it occurs, for “the Judge” substitute “the Tribunal”.
- (6) In Schedule 3 (the employment tribunals (equal value) rules of procedure)—
  - (a) in rule 6(1) (conduct of stage 2 equal value hearing), for “Any stage 2 equal value hearing shall be conducted by a full tribunal hearing and at the hearing” substitute “At a stage 2 equal value hearing”;
  - (b) in rule 12 (procedural matters), omit paragraph (3).

**Transitional and saving provision**

9. Until such time as the Senior President of Tribunals makes directions in accordance with regulations 3(1), 4(2) and 6(1)—
- (a) employment tribunals and the Employment Appeal Tribunal shall remain constituted as if regulations 3, 4, 5 and 6 had not been in force, and
  - (b) regulations 7 and 8 do not have effect.

Date

*Name*  
Minister of State  
Ministry of Justice

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## EXPLANATORY NOTE

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

Section 35 of the Judicial Review and Courts Act 2022 (c. 35) (the 2022 Act) substituted sections 4 and 28 of the Employment Tribunals Act 1996 (c. 17) (the 1996 Act) so as to make the Lord Chancellor responsible for the composition of an employment tribunal and of the Employment Appeal Tribunal (EAT). Section 35 of the 2022 Act was commenced via commencement regulations (the Judicial Review and Courts Act 2022 (Commencement No. 4) Regulations 2023 S.I. 2023/1194 (C. 84)) made before this instrument was laid and coming into force the day after they were made. Previously the composition was determined by the President or Vice President of Employment Tribunals or a Regional Employment Judge in accordance with regulations made by the Secretary of State for Business and Trade under section 1(1) of the 1996 Act in the case of the employment tribunal, and by a judge of the EAT under section 28 of the 1996 Act in the case of the EAT. Sections 4(7) and 28(6) of the 1996 Act as substituted by the 2022 Act allow the power to determine the composition of the employment tribunal and the EAT to be delegated by the Lord Chancellor to the Senior President of Tribunals (SPT) or the President of Employment Tribunals (in the case of the employment tribunals); or to the SPT or the President of the Appeal Tribunal in the case of the EAT.

These Regulations implement the new sections 4 and 28 of the 1996 Act by making provision, in relation to matters that fall to be decided by the employment tribunals or by the EAT, for the SPT to determine in a direction the number of members of the tribunal who are to decide the matter (regulations 3 and 4). Regulation 5 provides that where a matter is decided by a single member, that member must be an Employment Judge for an employment tribunal or for the EAT a judge of that tribunal. Regulation 6 provides that (in both the employment tribunals and the EAT) where the tribunal consists of two or more members, at least one member must be a judge, but whether the other members are to be judges or non-judicial members is to be decided in by the SPT in a direction. Regulation 6(3) allows the SPT to determine in a direction whether non-judicial members of the employment tribunals and of the EAT must have any qualifications and, if so, what those qualifications must be. Regulation 6(4) and (5) provides for the SPT to select a presiding member to chair tribunals, and for that presiding member to have a casting vote.

Under the Employment Appeal Tribunal Rules (S.I. 1993/2854) (the 1993 rules) and the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (S.I. 2013/1237) (the 2013 regulations), certain matters as to the composition of the tribunal were prescribed. Regulation 7 amends the 1993 rules so as to omit matters that conflict with the new arrangements under new section 28(3) of the 1996 Act in relation to the EAT. Regulation 8 does the same in relation to the 2013 regulations as a consequence of new section 4(4) of the 1996 Act, which makes equivalent provision in respect of the employment tribunals.

To ensure that there is no gap between the old and new regimes, regulation 9 makes transitional and saving provision to ensure that the current regime in relation to employment tribunal and EAT composition remains until the time when the SPT makes directions under regulations 3(1), 4(2) and 6(1). It makes similar provision to ensure that the amendments to the 1993 rules and the 2013 regulations do not take effect until those same directions are made.

An impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is foreseen.