

---

STATUTORY INSTRUMENTS

---

1985 No. 17

INDUSTRIAL TRIBUNALS

**The Industrial Tribunals (Rules of Procedure) (Scotland)  
Regulations 1985**

<i>Made</i> - - - - -	<i>9th January 1985</i>
<i>Laid before Parliament</i>	<i>18th January 1985</i>
<i>Coming into Operation</i>	<i>1st March 1985</i>

ARRANGEMENT OF REGULATIONS AND RULES

REGULATIONS

1. Citation, commencement and revocation.
2. Interpretation.
3. Proceedings of tribunals.
4. Proof of decisions of tribunals.

SCHEDULE 1—RULES OF PROCEDURE

1. Originating application.
2. Action upon receipt of originating application.
3. Appearance by respondent.
4. Power to require further particulars and attendance of witnesses and to order recovery of documents.
5. Time and place of hearing and appointment of assessor.
6. Pre-hearing assessment.
7. The hearing.
8. Procedure at hearing.
9. Decision of tribunal.
10. Review of tribunal's decision.
11. Expenses.
12. Miscellaneous powers of tribunal.
13. Extension of time and directions.
14. Additional and representative respondents.
15. Consolidation of proceedings.
16. Transfer of proceedings.
17. Notices, etc.

## SCHEDULE 2—COMPLEMENTARY RULES OF PROCEDURE

*For use only in proceedings involving an equal value claim*

4. Power to require further particulars and attendance of witnesses and to order recovery of documents.
- 7A. Procedure relating to expert's report.
8. Procedure at hearing.
9. Decision of tribunal.
11. Expenses.
12. Miscellaneous powers of tribunal.
17. Notices, etc.

The Secretary of State, in exercise of the powers conferred on him by paragraph 1 of Schedule 9 to the Employment Protection (Consolidation) Act 1978(a) and after consultation with the Council on Tribunals, hereby makes the following Regulations:—

*Citation, commencement and revocation*

1.— (1) These Regulations may be cited as the Industrial Tribunals (Rules of Procedure) (Scotland) Regulations 1985 (and the Rules of Procedure contained in Schedules 1 and 2 to these Regulations may be referred to as the Industrial Tribunals Rules of Procedure (Scotland) 1985 and the Industrial Tribunals Complementary Rules of Procedure (Scotland) 1985 respectively). They shall come into operation on 1st March 1985.

(2) The Industrial Tribunals (Rules of Procedure) (Scotland) Regulations 1980(b) shall cease to have effect on 1st March 1985 except in relation to proceedings instituted before that date.

*Interpretation*

2. In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

“the 1966 Act” means the Docks and Harbours Act 1966(c);

“the 1978 Act” means the Employment Protection (Consolidation) Act 1978;

“applicant” means a person who in pursuance of Rule 1 has presented an originating application to the Secretary of the Tribunals for a decision of a tribunal and includes:—

- (a) the Secretary of State, the Board or a licensing authority,
- (b) a claimant or complainant,

---

(a) 1978 c. 44; Schedule 9 was amended by Regulation 3 of the Equal Pay (Amendment) Regulations 1983 (S.I. 1983/1794).

(b) S.I. 1980/885, as amended by the Industrial Tribunals (Rules of Procedure) (Equal Value Amendment) Regulations 1983 (S.I. 1983/1807).

(c) 1966 c. 28.

(c) in the case of proceedings under section 51 of the 1966 Act, a person on whose behalf an originating application has been sent by a trade union, and

(d) in relation to interlocutory applications under these Rules, a person who seeks any relief;

“the Board” means the National Dock Labour Board as reconstituted under the Dock Work Regulation Act 1976(a);

“the clerk to the tribunal” means the person appointed by the Secretary of the Tribunals or an Assistant Secretary to act in that capacity at one or more hearings;

“decision” in relation to a tribunal includes a declaration, an order (other than an interlocutory order), a recommendation or an award of the tribunal but does not include an opinion given pursuant to a pre-hearing assessment held under Rule 6;

“the Equal Pay Act” means the Equal Pay Act 1970(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;

“hearing” means a sitting of a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the tribunal to reach a decision on any question;

“licensing authority” means a body having the function of issuing licences under the 1966 Act;

“the Office of the Tribunals” means the Central Office of the Industrial Tribunals (Scotland);

“the panel of chairmen” means the panel of persons, being advocates or solicitors of not less than seven years’ standing, appointed by the Lord President of the Court of Session in pursuance of Regulation 5(2) of the Industrial Tribunals (Scotland) Regulations 1965(c);

“party” in relation to proceedings under section 51 of the 1966 Act means the applicant and the Board or the licensing authority with which or (as the case may be) any person with whom it appears to the applicant that he is in dispute about a question to which that section applies and, in a case where such a question is referred to a tribunal by a sheriff, any party to the proceedings before the court in which the question arose;

“person entitled to appear” in relation to proceedings under section 51 of the 1966 Act means a party and any person who, under subsection (5) of that section, is entitled to appear and be heard before a tribunal in such proceedings;

---

(a) 1976 c. 79.

(b) 1970 c. 41; section 1 was amended by the Sex Discrimination Act 1975 (c. 65), section 8 and Schedule 1, paragraph 1, and was applied by the Employment Protection Act 1975 (c. 71), section 122(2), as amended by the Race Relations Act 1976 (c. 74), Schedule 3, paragraph 1(5); section 1 was amended and section 2A was inserted by the Equal Pay (Amendment) Regulations 1983 (S.I. 1983/1794).

(c) S.I. 1965/1157, as amended by S.I. 1967/302.

“the President” means the President of the Industrial Tribunals (Scotland) or the person nominated by the Lord President of the Court of Session to discharge for the time being the functions of the President;

“the Race Relations Act” means the Race Relations Act 1976(a);

“Regional Chairman” means a chairman appointed by the President to carry out such functions as the President may designate in connection with the due administration of justice by tribunals in Scotland, or a person nominated either by the President or a Regional Chairman to discharge for the time being the functions of a Regional Chairman;

“Register” means the Register of Applications and Decisions kept in pursuance of these Regulations;

“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;

“respondent” means a party to the proceedings before a tribunal other than the applicant, and other than the Secretary of State in proceedings under Parts III and VI of the 1978 Act in which he is not cited as the person against whom relief is sought;

“Rule” means, in Schedule 1 to these Regulations, a Rule of Procedure contained in that Schedule, and, in Schedule 2 to these Regulations, a Rule of Procedure contained in Schedule 1 or Schedule 2 as appropriate;

“the Secretary of the Tribunals” and “an Assistant Secretary of the Tribunals” mean respectively the persons for the time being acting as the Secretary, or as an Assistant Secretary, of the Office of the Tribunals;

“the Sex Discrimination Act” means the Sex Discrimination Act 1975(b);

“tribunal” means an industrial tribunal (Scotland) established in pursuance of the Industrial Tribunals (Scotland) Regulations 1965 and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President or by a Regional Chairman.

#### *Proceedings of tribunals*

3.— (1) Except where separate Rules of Procedure made under the provisions of any enactment are applicable and subject to paragraph (2) of this Regulation, the Rules of Procedure contained in Schedule 1 to these Regulations shall have effect in relation to all proceedings before a tribunal where:—

- (a) the respondent or one of the respondents resides or carries on business in Scotland; or
- (b) the proceedings relate to a contract of employment the place of execution or performance of which is in Scotland; or
- (c) the proceedings are to determine a question which has been referred to the tribunal by a sheriff in Scotland; or
- (d) in proceedings under the 1966 Act they are in relation to a port in Scotland.

---

(a) 1976 c. 74.

(b) 1975 c. 65.

---

(2) In any such proceedings before a tribunal involving an equal value claim the Rules of Procedure contained in Schedule 2 to these Regulations (including Rule 7A) shall replace Rules 4, 8, 9, 11, 12 and 17 in Schedule 1.

*Proof of decisions of tribunals*

4. The production in any proceedings in any court of a document purporting to be certified by the Secretary of the Tribunals to be a true copy of an entry of a decision in the Register shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

*Tom King,*  
Secretary of State for Employment.

9th January 1985.

## Regulation 3(1)

## SCHEDULE 1

## RULES OF PROCEDURE

*Originating application*

1.— (1) Proceedings for the determination of any matter by a tribunal shall be instituted by the applicant (or, where applicable, by a sheriff) presenting to the Secretary of the Tribunals an application, to be known as an originating application, which shall be in writing and shall set out:

- (a) the name and address of the applicant; and
- (b) the names and addresses of the person or persons against whom relief is sought or (where applicable) of the parties to the proceedings before a sheriff; and
- (c) the grounds, with particulars thereof, on which relief is sought; or in proceedings under section 51 of the 1966 Act the question for determination and (except where the question is referred by a sheriff) the grounds on which relief is sought.

(2) Where the Secretary of the Tribunals is of the opinion that the originating application does not seek or on the facts stated therein cannot entitle the applicant to a relief which a tribunal has power to give, he may give notice to that effect to the applicant stating the reasons for his opinion and informing him that the application will not be registered unless he states in writing that he wishes to proceed with it.

(3) An application as respects which a notice has been given in pursuance of the preceding paragraph shall not be treated as having been received for the purposes of Rule 2 unless the applicant intimates in writing to the Secretary of the Tribunals that he wishes to proceed with it; and upon receipt of such an intimation the Secretary of the Tribunals shall proceed in accordance with that Rule.

*Action upon receipt of originating application*

2. Upon receiving an originating application the Secretary of the Tribunals shall enter particulars of it in the Register and shall forthwith send a copy of it to the respondent and inform the parties in writing of the case number of the originating application entered in the Register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Secretary of the Tribunals shall be sent. Every copy of the originating application sent by the Secretary of the Tribunals under this Rule shall be accompanied by a written notice which shall include information, as appropriate to the case, about the means and time for entering an appearance, the consequences of failure to do so, and the right to receive a copy of the decision. The Secretary of the Tribunals shall also notify the parties that in all cases under the provisions of any enactment providing for conciliation the services of a conciliation officer are available to them.

*Appearance by respondent*

3.— (1) A respondent shall within 14 days of receiving the copy originating application enter an appearance to the proceedings by presenting to the Secretary of the Tribunals a written notice of appearance setting out his full

name and address and stating whether or not he intends to resist the application and, if so, setting out sufficient particulars to show on what grounds. Upon receipt of a notice of appearance the Secretary of the Tribunals shall forthwith send a copy of it to any other party.

(2) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except—

- (i) to apply under Rule 13(1) for an extension of the time appointed by this Rule for entering an appearance;
- (ii) to make an application under Rule 4(1)(i);
- (iii) to make an application under Rule 10(2) in respect of Rule 10(1)(b);
- (iv) to be called as a witness by another person;
- (v) to be sent a copy of a document or corrected entry in pursuance of Rule 9(6), 9(10) or 10(5).

(3) A notice of appearance which is presented to the Secretary of the Tribunals after the time appointed by this Rule for entering appearances shall be deemed to include an application under Rule 13(1) (by the respondent who has presented the notice of appearance) for an extension of the time so appointed. Without prejudice to Rule 13(4), if the tribunal grants the application (which it may do notwithstanding that the grounds of the application are not stated) the Secretary of the Tribunals shall forthwith send a copy of the notice of appearance to any other party. The tribunal shall not refuse an extension of time under this Rule unless it has sent notice to the person wishing to enter an appearance giving him an opportunity to show cause why the extension should be granted.

*Power to require further particulars and attendance of witnesses and to order recovery of documents*

4.— (1) A tribunal may—

- (a) subject to Rule 3(2), on the application of a party to the proceedings made either by notice to the Secretary of the Tribunals or at the hearing of the originating application, or
- (b) in relation to sub-paragraph (i) of this paragraph, if it thinks fit, of its own motion—
  - (i) require a party to furnish in writing to the person specified by the tribunal further particulars of the grounds on which he or it relies and of any facts and contentions relevant thereto;
  - (ii) grant to the person making the application such recovery or inspection of documents (including the taking of copies) as might be granted by a sheriff; and
  - (iii) require the attendance of any person (including a party to the proceedings) as a witness, wherever such person may be within Great Britain, and may, if it does so require the attendance of a person, require him to produce any document relating to the matter to be determined;

and may appoint the time at or within which or the place at which any act required in pursuance of this Rule is to be done.

(2) A party on whom a requirement has been made under paragraph (1)(i) or (1)(ii) of this Rule on an *ex parte* application, or (in relation to a requirement under paragraph (1)(i)) on the tribunal's own motion, and a person on whom a requirement has been made under paragraph (1)(iii) 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 an application under this paragraph to vary or set aside a requirement shall be given to the parties (other than the party making the application) and, where appropriate, in proceedings which may involve payments out of the Redundancy Fund or Maternity Pay Fund, the Secretary of State if not a party.

(3) Every document containing a requirement under paragraph (1)(ii) or (1)(iii) of this Rule shall contain a reference to the fact that, under paragraph 1(7) of Schedule 9 to the 1978 Act, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

(4) If the requirement under paragraph (1)(i) or (1)(ii) of this Rule is not complied with, a tribunal, before or at the hearing, may dismiss the whole or part of the originating application, or, as the case may be, strike out the whole or part of the notice of appearance, and, where appropriate, direct that a respondent shall be debarred from defending altogether: Provided that a tribunal shall not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why such should not be done.

*Time and place of hearing and appointment of assessor*

5.— (1) The President or a Regional Chairman shall fix a date, time and place of the hearing of the originating application and the Secretary of the Tribunals shall (subject to Rule 3(2)) not less than 14 days (or such shorter time as may be agreed by him with the parties) before the date so fixed send to each party a notice of hearing which shall include information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.

(2) In any proceedings under the 1966 Act in which the President or a Regional Chairman so directs, the Secretary of the Tribunals shall also take such of the following steps as may be so directed, namely—

- (a) publish in one or more newspapers circulating in the locality in which the port in question is situated notice of the hearing;
- (b) send notice of the hearing to such persons as may be directed;
- (c) post notices of the hearing in a conspicuous place or conspicuous places in or near the port in question;

but the requirement as to the period of notice contained in paragraph (1) of this Rule shall not apply to any such notices.

(3) Where in the case of any proceedings it is provided for one or more assessors to be appointed, the President or a Regional Chairman may, if he thinks fit, appoint a person or persons having special knowledge or experience



in relation to the subject matter of the originating application to sit with the tribunal as assessor or assessors.

*Pre-hearing assessment*

6.— (1) A tribunal may at any time before the hearing (either, subject to Rule 3(2), on the application of a party to the proceedings made by notice to the Secretary of the Tribunals or of its own motion) consider, by way of a pre-hearing assessment, the contents of the originating application and entry of appearance, any representations in writing which have been submitted and any oral argument advanced by or on behalf of a party.

(2) If, upon a pre-hearing assessment, the tribunal considers that the originating application or the contentions or any particular contention of a party appear or, as the case may be, appears to have no reasonable prospect of success, it may indicate that in its opinion, if the originating application shall not be withdrawn or the contentions or contention of the party shall be persisted in up to or at the hearing, the party in question may have an order for expenses made against him at the hearing under the provisions of Rule 11. A pre-hearing assessment shall not take place unless the tribunal has sent notice to the parties to the proceedings giving them (and, where appropriate, in proceedings which may involve payments out of the Redundancy Fund or Maternity Pay Fund, the Secretary of State, if not a party) an opportunity to submit representations in writing and to advance oral argument at the pre-hearing assessment if they so wish.

(3) Any indication of opinion made in accordance with paragraph (2) of this Rule shall be recorded in a document signed by the chairman, a copy of which shall be sent to the parties to the proceedings and a copy of which shall be available to the tribunal at the hearing.

(4) Where a tribunal has indicated its opinion in accordance with paragraph (2) of this Rule no member thereof shall be a member of the tribunal at the hearing.

*The hearing*

7.— (1) Any hearing of or in connection with an originating application shall take place in public unless in the opinion of the tribunal a private hearing is appropriate for the purpose of hearing evidence which relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public or hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

- (a) information which he could not disclose without contravening a prohibition imposed by or under any enactment; or
- (b) any information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (c) information the disclosure of which would cause substantial injury to any undertaking in which he works for reasons other than its effect on

negotiations with respect to any of the matters mentioned in section 29(1) of the Trade Union and Labour Relations Act 1974(a).

(2) A member of the Council on Tribunals or of its Scottish Committee shall be entitled to attend any hearing taking place in private in his capacity as such member.

(3) Subject to Rule 3(2), if a party shall desire to submit representations in writing for consideration by a tribunal at the hearing of the originating application that party shall present such representations to the Secretary of the Tribunals not less than 7 days before the hearing and shall at the same time send a copy to the other party or parties.

(4) Where a party has failed to attend or be represented at the hearing (whether or not he has sent any representations in writing) the contents of his originating application or, as the case may be, of his entry of appearance may be treated by a tribunal as representations in writing.

(5) The Secretary of State if he so elects shall be entitled to apply under Rule 4(1), 13(1) and (2), 15 and 16(1) and to appear as if he were a party and be heard at any hearing of or in connection with an originating application in which he is not a party in proceedings which may involve payments out of the Redundancy Fund or Maternity Pay Fund.

(6) Subject to Rule 3(2), at any hearing of or in connection with an originating application a party and any person entitled to appear may appear before the tribunal and may be heard in person or be represented by counsel or by a solicitor or by a representative of a trade union or an employers' association or by any other person whom he desires to represent him.

*Procedure at hearing*

8.— (1) The tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall so far as appears to it appropriate seek to avoid formality in its proceedings and it shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts of law.

(2) Subject to paragraph (1) of this Rule, at the hearing of the originating application a party (unless disentitled by virtue of Rule 3(2)), the Secretary of State (if, not being a party, he elects to appear as provided in Rule 7(5)) and any other person entitled to appear shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.

(3) If a party shall fail to appear or to be represented at the time and place fixed for the hearing, the tribunal may, if that party is an applicant, dismiss or, in any case, dispose of the application in the absence of that party or may adjourn the hearing to a later date: Provided that before deciding to dismiss or disposing of any application in the absence of a party the tribunal shall consider any representations submitted by that party in pursuance of Rule 7(3).

---

(a) 1974 c. 52.

(4) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

*Decision of tribunal*

9.— (1) A decision of a tribunal may be taken by a majority thereof and, if the tribunal shall be constituted of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal, which may be given orally at the end of a hearing or reserved, shall be recorded in a document signed by the chairman.

(3) A tribunal shall give reasons, which may be in full or in summary form, for its decision.

(4) The reasons for the decision of the tribunal shall be recorded in a document signed by the chairman, which shall also contain a statement as to whether the reasons are in full or in summary form.

(5) Where:—

- (a) the proceedings before the tribunal involved the determination of an issue arising under or relating to section 51 of the 1966 Act, the Equal Pay Act, the Sex Discrimination Act, the Race Relations Act, sections 23, 58, 59(a) or 77 of the 1978 Act, or sections 4 or 5 of the Employment Act 1980(a); or
- (b) the reasons have been given in summary form and it appears at any time to the tribunal that the reasons should be given in full; or
- (c) a request that the reasons be given in full is made orally at the hearing by a party or by a person entitled to appear who did so appear; or
- (d) such a request is made in writing within 21 days of the date on which the document recording the reasons in summary form was sent to the parties;

the reasons shall be recorded in full in a document signed by the chairman.

(6) The clerk to the tribunal shall transmit any document referred to in paragraphs (2), (4) and (5) of this Rule to the Secretary of the Tribunals who shall as soon as may be enter it in the Register and shall send a copy of the entry to each of the parties and to the persons entitled to appear who did so appear and, where the originating application was sent to a tribunal by a sheriff, to that sheriff.

(7) Any document referred to in paragraphs (4) and (5) of this Rule shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs and in that event any such document shall be sent to the parties and to any appellate court in any proceedings relating to such decision together with the copy of the entry.

---

(a) 1980 c. 42.

(8) The Register shall be kept at the Office of the Tribunals and shall be open to the inspection of any person without charge at all reasonable hours.

(9) Clerical mistakes in any document referred to in paragraphs (2), (4) and (5) of this Rule, or errors arising in such a document from an accidental slip or omission may at any time be corrected by the chairman by certificate under his hand.

(10) The clerk to the tribunal shall send a copy of any document so corrected and the certificate of the chairman to the Secretary of the Tribunals who shall as soon as may be make such correction as may be necessary in the Register and shall send a copy of any corrected entry or of any corrected document containing reasons for the tribunal's decision, as the case may be, to each of the parties and, in the case of a corrected entry, to the persons entitled to appear who did so appear and, where the originating application was sent to the tribunal by a sheriff, to that sheriff.

(11) If any decision is—

- (a) corrected under paragraph (9) of this Rule,
- (b) reviewed, revoked or varied under Rule 10, or
- (c) altered in any way by order of an appellate court,

the Secretary of the Tribunals shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties and to the persons entitled to appear who did so appear and, where the originating application was sent to the tribunal by a sheriff, to that sheriff.

(12) Where by this Rule a document is required to be signed by the chairman but by reason of death or incapacity the chairman is unable to sign such document it shall be signed by the other members of the tribunal, who shall certify that the chairman is unable to sign.

#### *Review of tribunal's decision*

**10.**— (1) A tribunal shall have power to review and to revoke or vary by certificate under the chairman's hand any decision on the grounds that—

- (a) the decision was wrongly made as a result of an error on the part of the tribunal staff; or
- (b) a party did not receive notice of the proceedings leading to the decision; or
- (c) the decision was made in the absence of a party or person entitled to be heard; or
- (d) new evidence has become available since the conclusion of the hearing to which the decision relates provided that its existence could not have been reasonably known of or foreseen; or
- (e) the interests of justice require such a review.

(2) An application for the purposes of paragraph (1) of this Rule may be made at the hearing. If the application is not made at the hearing, such application shall be made to the Secretary of the Tribunals at any time from the

date of the hearing until 14 days after the date on which the decision was sent to the parties and must be in writing stating the grounds in full.

(3) An application for the purposes of paragraph (1) of this Rule may be refused by the President or by the chairman of the tribunal which decided the case or by a Regional Chairman if in his opinion it has no reasonable prospect of success.

(4) If such an application is not refused under paragraph (3) of this Rule it shall be heard by the tribunal which decided the case, or

- (a) where it is not practicable for it to be heard by that tribunal, or
- (b) where the decision was made by a chairman acting alone under Rule 12(4),

by a tribunal appointed either by the President or a Regional Chairman, and if the application is granted the tribunal shall proceed to a review of the decision and, having reviewed it, may confirm, vary or revoke that decision, and if the tribunal revokes the decision it shall order a re-hearing before either the same or a differently constituted tribunal.

(5) The clerk to the tribunal shall send to the Secretary of the Tribunals the certificate of the chairman as to any revocation or variation of the tribunal's decision under this Rule. The Secretary of the Tribunals shall as soon as may be make such correction as may be necessary in the Register and shall send a copy of the entry to each of the parties and to the persons entitled to appear who did so appear and where the originating application was sent to a tribunal by a sheriff, to that sheriff.

#### *Expenses*

**11.**— (1) Subject to paragraphs (2), (3) and (4) of this Rule, a tribunal shall not normally make an award in respect of the expenses incurred by a party to the proceedings but where in its opinion a party (and if he is a respondent whether or not he has entered an appearance) has in bringing or conducting the proceedings acted frivolously, vexatiously or otherwise unreasonably the tribunal may make—

- (a) an order that that party shall pay to another party (or to the Secretary of State if, not being a party, he has acted as provided in Rule 7(5)) a specified sum in respect of the expenses incurred by that other party (or, as the case may be, by the Secretary of State) or the whole or part of those expenses as taxed (if not otherwise agreed);
- (b) an order that that party shall pay to the Secretary of State the whole, or any part, of any allowances (other than allowances paid to members of tribunals or assessors) paid by the Secretary of State under paragraph 10 of Schedule 9 to the 1978 Act to any person for the purposes of, or in connection with, his attendance at the tribunal.

(2) Where the tribunal has on the application of a party to the proceedings postponed the day or time fixed for or adjourned the hearing, the tribunal may make orders against or, as the case may require, in favour of that party as at paragraph (1)(a) and (b) of this Rule as respects any expenses incurred or any allowances paid as a result of the postponement or adjournment.

(3) Where, on a complaint of unfair dismissal in respect of which—

- (i) the applicant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent at least 7 days before the hearing of the complaint, or
- (ii) the proceedings arise out of the respondent's failure to permit the applicant to return to work after an absence due to pregnancy or confinement,

any postponement or adjournment of the hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the applicant was dismissed, or, as the case may be, which she held before her absence, or of comparable or suitable employment, the tribunal shall make orders against that respondent as at paragraph (1)(a) and (b) of this Rule as respects any expenses incurred or any allowances paid as a result of the postponement or adjournment.

(4) In any proceedings under the 1966 Act a tribunal may make—

- (a) an order that a party, or any other person entitled to appear who did so appear, shall pay to another party or such person either a specified sum in respect of the expenses incurred by that other party or person or the whole or part of those expenses as taxed (if not otherwise agreed);
- (b) an order that a party, or any other person entitled to appear who did so appear, shall pay to the Secretary of State a specified sum in respect of the whole, or any part, of any allowance (other than allowances paid to members of tribunals) paid by the Secretary of State under paragraph 10 of Schedule 9 to the 1978 Act to any person for the purposes of, or in connection with, his attendance at the tribunal.

(5) Any expenses required by an order under this Rule to be taxed may be taxed in the sheriff court according to such of the scales prescribed by the sheriff court rules for civil proceedings in the sheriff court as shall be directed by the order.

#### *Miscellaneous powers of tribunal*

**12.**— (1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure.

(2) A tribunal may, if it thinks fit—

- (a) extend the time appointed by or under these Rules for doing any act notwithstanding that the time appointed may have expired;
- (b) postpone the day or time fixed for, or adjourn, any hearing (particularly as respects cases under the provisions of any enactment providing for conciliation for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn);
- (c) if the applicant shall at any time give notice of the withdrawal of his originating application, dismiss the proceedings;
- (d) except in proceedings under the 1966 Act, if both or all the parties (and the Secretary of State if, not being a party, he has acted as provided in Rule 7(5)) agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;
- (e) subject to the Proviso below, at any stage of the proceedings order to

be struck out or amended any originating application or notice of appearance or anything in such application or notice of appearance on the ground that it is vexatious;

- (f) subject to the Proviso below, on the application of the respondent, or of its own motion, order to be struck out any application for excessive delay in proceeding with it;

Provided that before making any order under (e) or (f) above the tribunal shall send notice to the party against whom it is proposed that any such order should be made giving him an opportunity to show cause why such an order should not be made.

(3) Subject to Rule 4(2), a tribunal may, if it thinks fit, before granting an application under Rule 4 or Rule 13 require the party (or, as the case may be, the Secretary of State) making the application to give notice of it to the other party or parties. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made being an address and time specified for the purposes of the application by the tribunal.

(4) Any act other than the holding of a pre-hearing assessment under Rule 6, the hearing of an originating application or the making of an order under Rule 10(1), required or authorised by these Rules to be done by a tribunal may be done by, or on the direction of, the President or the chairman of the tribunal or any chairman being a member of the panel of chairmen.

(5) Rule 11 shall apply to an order dismissing proceedings under paragraph (2)(c) of this Rule.

(6) Any functions of the Secretary of the Tribunals other than that mentioned in Rule 1(2) may be performed by an Assistant Secretary of the Tribunals.

#### *Extension of time and directions*

13.— (1) An application to a tribunal for an extension of the time appointed by these Rules for doing any act may be made by a party either before or after the expiration of any time so appointed.

(2) Subject to Rule 3(2), a party may at any time apply to a tribunal for directions on any matter arising in connection with the proceedings.

(3) An application under the foregoing provisions of this Rule shall be made by presenting to the Secretary of the Tribunals a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(4) The Secretary of the Tribunals shall give notice to both or all the parties (subject to Rule 3(2)) of any extension of time granted under Rule 12(2)(a) or any directions given in pursuance of this Rule.

#### *Additional and representative respondents*

14.— (1) A tribunal may at any time either upon the application of any

person or, where appropriate, of its own motion, direct any person against whom any relief is sought to be sisted as a party, and give such consequential directions as it considers necessary.

(2) A tribunal may likewise, either upon such application or of its own motion, order that any respondent named in the originating application or subsequently added, who shall appear to the tribunal not to have been, or to have ceased to be, directly interested in the subject of the originating application, be dismissed from the proceedings.

(3) Where there are numerous persons having the same interest in an originating application, one or more of them may be cited as the person or persons against whom relief is sought or may be authorised by the tribunal, before or at the hearing, to defend on behalf of all the persons so interested.

#### *Consolidation of proceedings*

15. Where there are pending before the industrial tribunals two or more originating applications, then, if at any time upon the application of a party or of its own motion it appears to a tribunal that—

- (a) some common question of law or fact arises in both or all of the originating applications, or
- (b) the relief claimed therein is in respect of or arises out of the same set of facts, or
- (c) for some other reason it is desirable to make an order under this Rule,

the tribunal may order that some (as specified in the order) or all of the originating applications shall be considered together, and may give such consequential directions as may be necessary: Provided that the tribunal shall not make an order under this Rule without sending notice to all parties concerned giving them an opportunity to show cause why such an order should not be made.

#### *Transfer of proceedings*

16.— (1) Where there is pending before the industrial tribunals an originating application in respect of which it appears to the President or a Regional Chairman that the proceedings could be determined in an industrial tribunal (England and Wales) established in pursuance of the Industrial Tribunals (England and Wales) Regulations 1965<sup>(a)</sup> and that such application would more conveniently be determined by such a tribunal, the President or a Regional Chairman may, at any time upon the application of a party or of his own motion, with the consent of the President of the Industrial Tribunals (England and Wales), direct that the said proceedings be transferred to the Office of the Industrial Tribunals (England and Wales): Provided that no such directions shall be made unless notice has been sent to all parties concerned giving them an opportunity to show cause why such a direction should not be made.

(2) Where proceedings have been transferred to the Office of the Industrial Tribunals (Scotland) under Rule 16(1) of the Industrial Tribunals (Rules of

---

(a) S.I. 1965/1101.



Procedure) Regulations 1985(a) they shall be treated as if in all respects they had been commenced by an originating application.

*Notices, etc.*

17.— (1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary of the Tribunals may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary of the Tribunals to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraph (5) of this Rule) or delivered to or at—

- (a) in the case of a notice or document directed to the Secretary of State in proceedings to which he is not a party, the offices of the Department of Employment at Pentland House, 41 Robb's Loan, Edinburgh EH14 1TW, or such other office as may be notified by the Secretary of State;
- (b) in the case of a notice or document directed to the Board, the principal office of the Board;
- (c) in the case of a notice or document directed to a sheriff, the office of the sheriff clerk;
- (d) in the case of a notice or document directed to a party:—
  - (i) his address for service specified in the originating application or in a notice of appearance or in a notice under paragraph (4) of this Rule; or
  - (ii) if no address for service has been so specified, his last known address or place of business in the United Kingdom or, if the party is a corporation, the corporation's registered or principal office in the United Kingdom or, in any case, such address or place outside the United Kingdom as the President or a Regional Chairman may allow;
- (e) in the case of a notice or document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the United Kingdom, or if such a person is a corporation, the corporation's registered or principal office in the United Kingdom;

and if sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party may at any time by notice to the Secretary of the Tribunals and to the other party or parties (and, where appropriate, to the appropriate conciliation officer) change his address for service under these Rules.

(5) The recorded delivery service shall be used instead of the ordinary post:—

---

(a) S.I. 1985/16.

- (a) when a second set of documents or notices is to be sent to a respondent who has not entered an appearance under Rule 3(1);
  - (b) for service of an order made under Rule 4(1)(iii) requiring the attendance of a witness.
- (6) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this Rule, the President or a Regional Chairman may make an order for service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this Rule.
- (7) In proceedings brought under the provisions of any enactment providing for conciliation the Secretary of the Tribunals shall send copies of all documents and notices to a conciliation officer who in the opinion of the Secretary is an appropriate officer to receive them.
- (8) In proceedings which may involve payments out of the Redundancy Fund or Maternity Pay Fund, the Secretary of the Tribunals shall, where appropriate, send copies of all documents and notices to the Secretary of State notwithstanding the fact that he may not be a party to such proceedings.
- (9) In proceedings under the Equal Pay Act, the Sex Discrimination Act or the Race Relations Act the Secretary of the Tribunals shall send to the Equal Opportunities Commission or, as the case may be, the Commission for Racial Equality copies of all documents sent to the parties under Rule 9(6), (10) and (11) and Rule 10(5).

Regulation 3(2)

## SCHEDULE 2

### COMPLEMENTARY RULES OF PROCEDURE

*For use only in proceedings involving an equal value claim*

*Power to require further particulars and attendance of witnesses and to order recovery of documents*

- 4.— (1) A tribunal may—
- (a) subject to Rule 3(2), on the application of a party to the proceedings made either by notice to the Secretary of the Tribunals or at the hearing of the originating application, or
  - (b) in relation to sub-paragraph (i) of this paragraph, if it thinks fit, of its own motion—
    - (i) require a party to furnish in writing to the person specified by the tribunal further particulars of the grounds on which he or it relies and of any facts and contentions relevant thereto;
    - (ii) grant to the person making the application such recovery or inspection of documents (including the taking of copies) as might be granted by a sheriff; and

- (iii) require the attendance of any person (including a party to the proceedings) as a witness, wherever such person may be within Great Britain, and may, if it does so require the attendance of a person, require him to produce any document relating to the matter to be determined;

and may appoint the time at or within which or the place at which any act required in pursuance of this Rule is to be done.

(1A) Subject to paragraph (1B), 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) of this Rule—

- (a) of a conciliation officer who has acted in connection with the complaint under section 64 of the Sex Discrimination Act, 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) A party on whom a requirement has been made under paragraph (1)(i) or (1)(ii) of this Rule on an *ex parte* application, or (in relation to a requirement under paragraph (1)(i)) on the tribunal's own motion, and a person on whom a requirement has been made under paragraph (1)(iii) 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 an application under this paragraph to vary or set aside a requirement shall be given to the parties (other than the party making the application) and, where appropriate, in proceedings which may involve payments out of the Redundancy Fund or Maternity Pay Fund, the Secretary of State if not a party.

(2A) A person, whether or not a party to the proceedings, upon whom a requirement has been made under paragraph (1A) of this Rule, 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) Every document containing a requirement under paragraph (1)(ii) or (1)(iii) or paragraph (1A) of this Rule shall contain a reference to the fact that, under paragraph 1(7) of Schedule 9 to the 1978 Act, any person who without reasonable excuse fails to comply with any such requirement shall be liable on summary conviction to a fine, and the document shall state the amount of the current maximum fine.

(4) If the requirement under paragraph (1)(i) or (1)(ii) of this Rule is not complied with, a tribunal, before or at the hearing, may dismiss the whole or part of the originating application, or, as the case may be, strike out the whole or part of the notice of appearance, and, where appropriate, direct that a respondent shall be debarred from defending altogether: Provided that a tribunal shall not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why such should not be done.

*Procedure relating to expert's report*

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) of this Rule.

(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) of this Rule 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) of this Rule the report shall be admitted as evidence in the case unless the tribunal has exercised its power under paragraph (8) of this Rule 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) of this Rule, 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) of this Rule shall again apply.

(9) In forming its view on the matters contained in paragraph (8)(a), (b) and (c) of this Rule, 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) of this Rule shall comply with paragraph (2) of this Rule 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) of this Rule, 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 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.

*Procedure at hearing*

8.— (1) Subject to paragraphs (2A), (2B), (2C), (2D) and (2E) of this Rule the tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall so far as appears to it appropriate seek to avoid formality in its proceedings and it shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts of law.

(2) Subject to paragraphs (1), (2A), (2B), (2C) and (2D) of this Rule, at the hearing of the originating application a party (unless disentitled by virtue of Rule 3(2)), the Secretary of State (if, not being a party, he elects to appear as provided in Rule 7(5)) and any other person entitled to appear shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal.

(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) of this Rule, 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) 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) of this Rule, no party 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) of this Rule, a tribunal may, notwithstanding paragraph (2C) of this Rule, 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) 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) of this Rule, 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.

(3) If a party shall fail to appear or to be represented at the time and place fixed for the hearing, the tribunal may, if that party is an applicant, dismiss or, in any case, dispose of the application in the absence of that party or may adjourn the hearing to a later date: Provided that before deciding to dismiss or disposing of any application in the absence of a party the tribunal shall consider any representations submitted by that party in pursuance of Rule 7(3).

(4) A tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

#### *Decision of tribunal*

9.— (1) A decision of a tribunal may be taken by a majority thereof and, if the tribunal shall be constituted of two members only, the chairman shall have a second or casting vote.

(2) The decision of a tribunal, which may be given orally at the end of a hearing or reserved, shall be recorded in a document signed by the chairman.

(3) A tribunal shall give reasons for its decision.

(4) The reasons for the decision of the tribunal shall be recorded in full form in a document signed by the chairman.

(4A) There shall be appended to the document referred to in paragraph (4) of this Rule a copy of the report (if any) of an expert received by the tribunal in the course of the proceedings.

[paragraph (5) is omitted because it has no relevance in proceedings involving an equal value claim]

(6) The clerk to the tribunal shall transmit any document referred to in paragraphs (2), (4) and (4A) of this Rule to the Secretary of the Tribunals who shall as soon as may be enter it in the Register and shall send a copy of the entry to each of the parties and to the persons entitled to appear who did so appear and, where the originating application was sent to a tribunal by a sheriff, to that sheriff.

(7) Any document referred to in paragraphs (4) and (4A) of this Rule shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal so directs and in that event any such document shall be sent to the parties and to any appellate court in any proceedings relating to such decision together with the copy of the entry.

(8) The Register shall be kept at the Office of the Tribunals and shall be open to the inspection of any person without charge at all reasonable hours.

(9) Clerical mistakes in any document referred to in paragraphs (2) and (4) of this Rule, or errors arising in such a document from an accidental slip or omission, may at any time be corrected by the chairman by certificate under his hand.

(10) The clerk to the tribunal shall send a copy of any document so corrected and the certificate of the chairman to the Secretary of the Tribunals who shall as soon as may be make such correction as may be necessary in the Register and shall send a copy of any corrected entry or of any corrected document containing reasons for the tribunal's decision, as the case may be, to each of the parties and, in the case of a corrected entry, to the persons entitled to appear who did so appear and, where the originating application was sent to the tribunal by a sheriff, to that sheriff.

(11) If any decision is—

- (a) corrected under paragraph (9) of this Rule,
- (b) reviewed, revoked or varied under Rule 10, or
- (c) altered in any way by order of an appellate court,

the Secretary of the Tribunals shall alter the entry in the Register to conform with any such certificate or order and shall send a copy of the new entry to each of the parties and to the persons entitled to appear who did so appear and, where the originating application was sent to the tribunal by a sheriff, to that sheriff.

(12) Where by this Rule a document is required to be signed by the chairman but by reason of death or incapacity the chairman is unable to sign such document it shall be signed by the other members of the tribunal, who shall certify that the chairman is unable to sign.

### *Expenses*

**11.—**(1) Subject to paragraphs (2) and (3) of this Rule, a tribunal shall not normally make an award in respect of the expenses incurred by a party to the proceedings but where in its opinion a party (and if he is a respondent whether or not he has entered an appearance) has in bringing or conducting the proceedings acted frivolously, vexatiously or otherwise unreasonably the tribunal may make—

- (a) an order that that party shall pay to another party (or to the Secretary of State if, not being a party, he has acted as provided in Rule 7(5)) a specified sum in respect of the expenses incurred by that other party (or, as the case may be, by the Secretary of State) or the whole or part of those expenses as taxed (if not otherwise agreed);
- (b) an order that that party shall pay to the Secretary of State the whole,



or any part, of any allowances (other than allowances paid to members of tribunals, experts or assessors) paid by the Secretary of State under paragraph 10 of Schedule 9 to the 1978 Act to any person for the purposes of, or in connection with, his attendance at the tribunal.

(1A) For the purposes of paragraph (1)(a) of this Rule, the expenses in respect of which a tribunal may make an order include 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.

(2) Where the tribunal has on the application of a party to the proceedings postponed the day or time for or adjourned the hearing, the tribunal may make orders against or, as the case may require, in favour of that party as at paragraph (1)(a) and (b) of this Rule as respects any expenses incurred or any allowances paid as a result of the postponement or adjournment.

(3) Where, on a complaint of unfair dismissal in respect of which—

- (i) the applicant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent at least 7 days before the hearing of the complaint, or
- (ii) the proceedings arise out of the respondent's failure to permit the applicant to return to work after an absence due to pregnancy or confinement,

any postponement or adjournment of the hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the applicant was dismissed, or, as the case may be, which she held before her absence, or of comparable or suitable employment, the tribunal shall make orders against that respondent as at paragraph (1)(a) and (b) of this Rule as respects any expenses incurred or any allowances paid as a result of the postponement or adjournment.

[paragraph (4) is omitted because it has no relevance in proceedings involving an equal value claim]

(5) Any expenses required by an order under this Rule to be taxed may be taxed in the sheriff court according to such of the scales prescribed by the sheriff court rules for civil proceedings in the sheriff court as shall be directed by the order.

#### *Miscellaneous powers of tribunal*

**12.—**(1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure.

(2) A tribunal may, if it thinks fit—

- (a) extend the time appointed by or under these Rules for doing any act notwithstanding that the time appointed may have expired;
- (b) postpone the day or time fixed for, or adjourn, any hearing (particularly as respects cases under the provisions of any enactment providing for conciliation for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn);

- (c) if the applicant shall at any time give notice of the withdrawal of his originating application, dismiss the proceedings;
- (d) except in proceedings under the 1966 Act, if both or all the parties (and the Secretary of State if, not being a party, he has acted as provided in Rule 7(5)) agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly;
- (e) subject to the proviso below, at any stage of the proceedings order to be struck out or amended any originating application or notice of appearance or anything in such application or notice of appearance on the ground that it is vexatious;
- (f) subject to the proviso below, on the application of the respondent, or of its own motion, order to be struck out any application for excessive delay in proceeding with it;

Provided that before making any order under (e) or (f) above the tribunal shall send notice to the party against whom it is proposed that any such order should be made giving him an opportunity to show cause why such an order should not be made.

(2A) Without prejudice to the generality of paragraph (2)(b) of this Rule, the tribunal shall, before proceeding to hear the parties on an equal value 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, 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) of this Rule, 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).

(3) Subject to Rule 4(2), and (2A), a tribunal may, if it thinks fit, before granting an application under Rule 4 or Rule 13 require the party (or, as the case may be, the Secretary of State or, in the case of an application under Rule 4(1A), the expert) making the application to give notice of it to the other party or parties (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). The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made being an address and time specified for the purposes of the application by the tribunal.

(4) Any act other than the holding of a pre-hearing assessment under Rule 6, the hearing of an originating application or the making of an order under Rule 10(1), required or authorised by these Rules to be done by a tribunal may be done by, or on the direction of, the President or the chairman of the tribunal or any chairman being a member of the panel of chairmen.

(5) Rule 11 shall apply to an order dismissing proceedings under paragraph (2)(c) of this Rule.

(6) Any functions of the Secretary of the Tribunals other than that mentioned in Rule 1(2) may be performed by an Assistant Secretary of the Tribunals.

*Notices, etc.*

17.— (1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules to be presented to the Secretary of the Tribunals may be presented at the Office of the Tribunals or such other office as may be notified by the Secretary of the Tribunals to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraph (5) of this Rule) or delivered to or at—

(a) in the case of a notice or document directed to the Secretary of State in proceedings to which he is not a party, the offices of the Department of Employment at Pentland House, 41 Robb's Loan, Edinburgh EH14 1TW, or such other office as may be notified by the Secretary of State;

[sub-paragraph (b) is omitted because it has no relevance in proceedings involving an equal value claim]

(c) in the case of a notice or document directed to a sheriff, the office of the sheriff clerk;

(d) in the case of a notice or document directed to a party:—

(i) his address for service specified in the originating application or in a notice of appearance or in a notice under paragraph (4) of this Rule; or

(ii) if no address for service has been so specified, his last known address or place of business in the United Kingdom or, if the party is a corporation, the corporation's registered or principal office in the United Kingdom or, in any case, such address or place outside the United Kingdom as the President or a Regional Chairman may allow;

(e) in the case of a notice or document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the United Kingdom, or if such a person is a corporation, the corporation's registered or principal office in the United Kingdom;

and if sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party may at any time by notice to the Secretary of the Tribunals and to the other party or parties (and, where appropriate, to the appropriate conciliation officer and the appropriate expert) change his address for service under these Rules.

(5) The recorded delivery service shall be used instead of the ordinary post:—

(a) when a second set of documents or notices is to be sent to a respondent who has not entered an appearance under Rule 3(1);

(b) for service of an order made under Rule 4(1)(iii) or (1A).

(6) Where for any sufficient reason service of any document or notice cannot

be effected in the manner prescribed under this Rule, the President or a Regional Chairman may make an order for service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this Rule.

(7) In proceedings brought under the provisions of any enactment providing for conciliation the Secretary of the Tribunals shall send copies of all documents and notices to a conciliation officer who in the opinion of the Secretary is an appropriate officer to receive them.

(8) In proceedings which may involve payments out of the Redundancy Fund or Maternity Pay Fund, the Secretary of the Tribunals shall, where appropriate, send copies of all documents and notices to the Secretary of State notwithstanding the fact that he may not be a party to such proceedings.

(9) In proceedings under the Equal Pay Act, the Sex Discrimination Act or the Race Relations Act the Secretary of the Tribunals shall send to the Equal Opportunities Commission or, as the case may be, the Commission for Racial Equality copies of all documents sent to the parties under Rule 9(6), (10) and (11) and Rule 10(5).

---

#### EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These Regulations regulate the procedure of industrial tribunals for Scotland in relation to all proceedings instituted on or after 1st March 1985 except those where separate Rules of Procedure, made under the provisions of any enactment, are applicable (there are currently separate Rules of Procedure in relation to proceedings brought under the Industrial Training Act 1982 (c. 10) (industrial training levy appeals), the Health and Safety at Work etc. Act 1974 (c. 37) (improvement and prohibition notices appeals) and the Sex Discrimination Act 1975 and Race Relations Act 1976 (non-discrimination notices appeals)).

The Regulations are in place of the Industrial Tribunals (Rules of Procedure) (Scotland) Regulations 1980 as amended by the Industrial Tribunals (Rules of Procedure) (Equal Value Amendment) Regulations 1983.

Schedule 1 contains Rules of Procedure which apply in their entirety in all proceedings governed by these Regulations apart from those involving an equal value claim.

Schedule 2 contains Rules of Procedure which apply only in proceedings involving an equal value claim. These Rules are complementary to those in Schedule 1: in proceedings involving an equal value claim, Rules 4, 7A, 8, 9, 11, 12 and 17 in Schedule 2 and Rules 1-3, 5-7, 10 and 13-16 in Schedule 1 will apply.



SI 1985/17  
ISBN 0-11-056017-5



780110 560175