

2001 No. 1128

EMPLOYMENT TRIBUNALS

The Employment Appeal Tribunal (Amendment) Rules 2001

<i>Made</i> - - - -	<i>22nd March 2001</i>
<i>Laid before Parliament</i>	<i>27th March 2001</i>
<i>Coming into force</i>	<i>18th April 2001</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 30(1), (2)(a), (b), (c) and (d) and (2A) and 41(4) of the Employment Tribunals Act 1996^(a) and of all other powers enabling him in that behalf, and after consultation with the Lord President of the Court of Session, hereby makes the following Rules:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Employment Appeal Tribunal (Amendment) Rules 2001 and shall come into force on 18th April 2001.

(2) In these Rules, any reference to a rule or to the Schedule is a reference to a rule in, or to the Schedule to, the Employment Appeal Tribunal Rules 1993^(b).

Amendment of rules

2. For rule 2 substitute—

“Interpretation

2.—(1) In these rules—

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992^(c);

“the 1996 Act” means the Employment Tribunals Act 1996;

“the 1999 Regulations” means the Transnational Information and Consultation of Employees Regulations 1999^(d);

“the Appeal Tribunal” means the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975^(e) and continued in existence under section

^(a) 1996 c. 17. Section 30(2)(b) was amended by regulation 35(4) of the Transnational Information and Consultation of Employees Regulations 1999 (S.I. 1999/3323). Section 30(2)(d) was amended, and section 30(2A) was inserted, by paragraph 5(2) and (3) of Schedule 8 to the Employment Relations Act 1999 (c. 26). By virtue of section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) industrial tribunals were renamed employment tribunals and references to “industrial tribunal” and “industrial tribunals” in any enactment were substituted with “employment tribunal” and “employment tribunals”.

^(b) S.I. 1993/2854, to which there are amendments not relevant to these Rules.

^(c) 1992 c. 52.

^(d) S.I. 1999/3323.

^(e) 1975 c. 71.

20(1) of the 1996 Act and includes the President, a judge, a member or the Registrar acting on behalf of the Tribunal;

“the CAC” means the Central Arbitration Committee;

“the Certification Officer” means the person appointed to be the Certification Officer under section 254(2) of the 1992 Act;

“costs officer” means any officer of the Appeal Tribunal authorised by the President to assess costs or expenses;

“Crown employment proceedings” has the meaning given by section 10(8) of the 1996 Act;

“excluded person” means, in relation to any proceedings, a person who has been excluded from all or part of the proceedings by virtue of—

- (a) a direction of a Minister of the Crown under rule 30A(1)(b) or (c); or
- (b) an order of the Appeal Tribunal under rule 30A(2)(a) read with rule 30A(1)(b) or (c);

“judge” means a judge of the Appeal Tribunal nominated under section 22(1)(a) or (b) of the 1996 Act and includes a judge nominated under section 23(2) of, or a judge appointed under section 24(1) of, the 1996 Act to be a temporary additional judge of the Appeal Tribunal;

“member” means a member of the Appeal Tribunal appointed under section 22(1)(c) of the 1996 Act and includes a member appointed under section 23(3) of the 1996 Act to act temporarily in the place of a member appointed under that section;

“the President” means the judge appointed under section 22(3) of the 1996 Act to be President of the Appeal Tribunal and includes a judge nominated under section 23(1) of the 1996 Act to act temporarily in his place;

“the Registrar” means the person appointed to be Registrar of the Appeal Tribunal and includes any officer of the Tribunal authorised by the President to act on behalf of the Registrar;

“the Secretary of Employment Tribunals” means the person acting for the time being as the Secretary of the Central Office of the Employment Tribunals (England and Wales) or, as may be appropriate, of the Central Office of the Employment Tribunals (Scotland);

“special advocate” means a person appointed pursuant to rule 30A(4).

(2) In rules 3 and 6, “national security appeal” means an appeal from a decision or order of an employment tribunal in respect of which the Minister directed the employment tribunal under rule 7B(3), or the employment tribunal took steps under rule 8(2)(c), of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001(a) or of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001(b) (as inserted by Schedule 2, or Part II of Schedule 3, to those Regulations) to keep secret all or part of the reasons for the employment tribunal’s decision or order.

(3) Any reference in these Rules to a person who was the applicant or, as the case may be, the respondent in the proceedings before an employment tribunal includes, where those proceedings are still continuing, a reference to a person who is the applicant or, as the case may be, is the respondent in those proceedings.”

3. For rule 3, substitute—

“Institution of Appeal

3.—(1) Every appeal to the Appeal Tribunal shall, subject to paragraphs (2) and (4), be instituted by serving on the Tribunal the following documents—

- (a) a notice of appeal in, or substantially in, accordance with Form 1, 1A or 2 in the Schedule to these rules;
- (b) a copy of the decision or order of an employment tribunal or of the Certification Officer which is the subject of the appeal;

(a) S.I. 2001/1171.
(b) S.I. 2001/1170.

- (c) in the case of an appeal from an employment tribunal, a copy of the extended written reasons for the decision or order of that tribunal; and
- (d) in the case of an appeal made pursuant to regulation 38(8) of the 1999 Regulations from a declaration or order of the CAC, a copy of that declaration or order.

(2) The appellant shall not be required by virtue of paragraph (1)(c) to serve on the Appeal Tribunal a copy of the extended written reasons for the decision or order of the employment tribunal in a national security appeal in relation to which—

- (a) the appellant was the applicant in the proceedings before the employment tribunal; and
- (b) the extended written reasons were not sent to the appellant,

but if the appellant received a document containing some of the reasons for the employment tribunal's decision or order, he shall serve on the Appeal Tribunal a copy of that document.

(3) The period within which an appeal to the Appeal Tribunal may be instituted is—

- (a) 42 days from the date on which extended written reasons for the decision or order of the employment tribunal were sent to the appellant;
- (b) in the case of a national security appeal in relation to which the appellant was the applicant in the proceedings before the employment tribunal, 42 days from the date on which the document containing some of the reasons for the decision or order was sent to the appellant, or if no reasons were disclosed to the appellant, 42 days from the date on which a copy of the decision or order was sent to the appellant;
- (c) in the case of an appeal from a decision of the Certification Officer, 42 days from the date on which the written record of that decision was sent to the appellant;
- (d) in the case of an appeal from a declaration or order of the CAC under regulation 38(8) of the 1999 Regulations, 42 days from the date on which the written notification of that declaration or order was sent to the appellant.

(4) In the case of a national security appeal, the appellant shall not set out the grounds of appeal in his notice of appeal and shall not append to his notice of appeal the extended written reasons for the decision or order of the tribunal.

(5) In a national security appeal in relation to which the appellant was the respondent in the proceedings before the employment tribunal, the appellant shall, within the period described in paragraph (3)(a), provide to the Appeal Tribunal a document setting out the grounds on which the appeal is brought.

(6) In a national security appeal in relation to which the appellant was the applicant in the proceedings before the employment tribunal—

- (a) the appellant may, within the period described in paragraph (3)(b), provide to the Appeal Tribunal a document setting out the grounds on which the appeal is brought; and
- (b) a special advocate appointed in respect of the appellant may, within the period described in paragraph 3(b), or within 21 days of his appointment, whichever is later, provide to the Appeal Tribunal a document setting out the grounds on which the appeal is brought or providing supplementary grounds of appeal.

(7) Where it appears to the Registrar that the grounds of appeal stated in the notice of appeal, or in the document provided under paragraph (5) or (6), do not give the Appeal Tribunal jurisdiction to entertain the appeal, he shall notify the appellant or the special advocate accordingly informing him of the reasons for the opinion and, subject to paragraphs (8) and (10), no further action shall be taken on the appeal.

(8) Where notification has been given under paragraph (7), the appellant or the special advocate, as the case may be, may serve a fresh notice of appeal, or a fresh document under paragraph (5) or (6), within the time remaining under paragraph (3) or (6) or within 28 days from the date on which the Registrar's notification was sent to him, whichever is the longer period.

(9) Where the appellant or the special advocate serves a fresh notice of appeal or a fresh document under paragraph (8), the Registrar shall consider such fresh notice of appeal or document with regard to jurisdiction as though it were an original notice of appeal lodged pursuant to paragraphs (1) and (3), or as though it were an original document provided pursuant to paragraph (5) or (6), as the case may be.

(10) Where an appellant or a special advocate expresses dissatisfaction in writing with the reasons given by the Registrar, under paragraph (7), for his opinion that the grounds of appeal stated in a notice, or provided in a document under paragraph (5) or (6), do not give the Appeal Tribunal jurisdiction to entertain the appeal, the Registrar shall place the papers before the President or a judge for his direction as to whether any further action should be taken on the appeal.”.

4. In rule 4—

- (a) at the beginning, insert “(1)”;
- (b) in sub-paragraph (d), omit the words “Part VI of the 1978 Act or”;
- (c) after the words “the 1992 Act”, insert the words “or Part XI of the Employment Rights Act 1996(a)”;
- (d) at the end insert—
“; or
- (e) the Chairman of the CAC in the case of an appeal from the CAC under regulation 38(8) of the 1999 Regulations.

(2) On receipt of a document provided under rule 3(5)—

- (a) the Registrar shall not send the document to a person in respect of whom a Minister of the Crown has informed the Registrar that he wishes to address the Appeal Tribunal in accordance with rule 30A(3) with a view to the Appeal Tribunal making an order applicable to this stage of the proceedings under rule 30A(2)(a) read with 30A(1)(b) or (c) (exclusion of a party or his representative), at any time before the Appeal Tribunal decides whether or not to make such an order; but if it decides not to make such an order, the Registrar shall, subject to sub-paragraph (b), send the document to such a person 14 days after the Appeal Tribunal’s decision not to make the order; and
- (b) the Registrar shall not send a copy of the document to an excluded person, but if a special advocate is appointed in respect of such a person, the Registrar shall send a copy of the document to the special advocate.

(3) On receipt of a document provided under rule 3(6)(a) or (b), the Registrar shall not send a copy of the document to an excluded person, but shall send a copy of the document to the respondent”.

5. In rule 5—

- (a) in sub-paragraph (a), for the words “section 95 or 104”, substitute the words “section 45D, 56A, 95, 104 or 108C”;
- (b) in sub-paragraph (b), for the words “section 9”, substitute the words “section 9 or 126”;
- (c) at the end of sub-paragraph (b), insert—
“(c) in the case of an appeal made pursuant to regulation 38(8) of the 1999 Regulations from a declaration or order of the CAC, the parties (other than the appellant) to the proceedings before the CAC”.

6. In rule 6—

- (a) in paragraph (2)—
 - (i) after the words “resist an appeal shall,”, insert the words “subject to paragraph (6), and”;
 - (ii) after the words “rule 5(a)”, insert the words “or 5(c)”;
 - (iii) for the words “or the Certification Officer”, substitute the words “, the Certification Officer or the CAC”; and

(a) 1996 c. 18.

- (iv) after the word “decision”, insert the word “, declaration”;
 - (b) in paragraph (3), after the words “cross-appeal may,”, insert the words “subject to paragraph (6),”; and
 - (c) after paragraph (5), insert—
 - “(6) In a national security appeal, the respondent shall not set out the grounds on which he relies in his answer to an appeal, nor include in his answer a statement of the grounds of any cross-appeal.
 - (7) In a national security appeal in relation to which the respondent was not the applicant in the proceedings before the employment tribunal, the respondent shall, within the time appointed under paragraph (1), provide to the Registrar a document, setting out the grounds on which he intends to resist the appeal, and may include in that document a statement of the grounds of any cross-appeal.
 - (8) In a national security appeal in relation to which the respondent was the applicant in the proceedings before the employment tribunal—
 - (a) the respondent may, within the time appointed under paragraph (1) provide to the Registrar a document, setting out the grounds on which he intends to resist the appeal, and may include in that document a statement of the grounds of any cross-appeal; and
 - (b) a special advocate appointed in respect of the respondent may, within the time appointed under paragraph (1), or within 21 days of his appointment, whichever is the later, provide to the Registrar a document, setting out the grounds, or the supplementary grounds, on which the respondent intends to resist the appeal, and may include in that document a statement of the grounds, or the supplementary grounds, of any cross-appeal.
 - (9) In a national security appeal, if the respondent, or any special advocate appointed in respect of a respondent, provides in the document containing grounds for resisting an appeal a statement of grounds of cross-appeal and the appellant wishes to resist the cross-appeal—
 - (a) where the appellant was not the applicant in the proceedings before the employment tribunal, the appellant shall within a time to be appointed by the Appeal Tribunal deliver to the Tribunal a reply in writing setting out the grounds on which he relies; and
 - (b) where the appellant was the applicant in the proceedings before the employment tribunal, the appellant, or any special advocate appointed in respect of him, may within a time to be appointed by the Appeal Tribunal deliver to the Tribunal a reply in writing setting out the grounds on which the appellant relies.
 - (10) Any document provided under paragraph (7) or (9)(a) shall be treated by the Registrar in accordance with rule 4(2), as though it were a document received under rule 3(5).
 - (11) Any document provided under paragraph (8) or (9)(b) shall be treated by the Registrar in accordance with rule 4(3), as though it were a document received under rule 3(6)(a) or (b).”
- 7.** In rule 7(1)—
- (a) in sub-paragraph (d), for the words “Part VI of the 1978 Act” substitute the words “Part XI of the Employment Rights Act 1996”; and
 - (b) at the end of sub-paragraph (d), insert—
 - “; or
 - (e) the Chairman of the CAC in the case of an appeal from a declaration or order of, or arising in any proceedings before, the CAC under regulation 38(8) of the 1999 Regulations”.
- 8.** In rule 13, for the words “section 136A”, substitute the words “section 33 of the 1996 Act”.
- 9.** After rule 16 insert—

“Complaints under regulations 20 and 21 of the 1999 Regulations

16A. Every complaint under regulation 20 or 21 of the 1999 Regulations shall be made by way of application in writing in, or substantially in, accordance with Form 4A in the Schedule to these Rules and shall be served on the Appeal Tribunal.

Service of application under rule 16A

16B. On receipt of an application under rule 16A, the Registrar shall seal it with the Appeal Tribunal’s seal and shall serve a sealed copy on the applicant and on the respondent.

Appearance by respondent

16C. A respondent wishing to resist an application under rule 16A shall within 14 days of receiving the sealed copy of the application enter an appearance in, or substantially in, accordance with Form 5A in the Schedule to these Rules and setting out the grounds on which the respondent relies.

16D. On receipt of the notice of appearance under rule 16C the Registrar shall serve a copy of it on the applicant.”

10. In rule 17, for the words “or rule 13”, substitute the words “,13 or 16A”.
11. In rule 20—
 - (a) in paragraphs (2) and (3), for the words “paragraph 16(1) and (2) of Schedule 11”, substitute the words “section 28 of the 1996 Act”; and
 - (b) omit paragraph (4).
12. In rule 21(1)—
 - (a) omit the words “(subject to rule 22(2))”; and
 - (b) for the words “paragraph 16(1) and (2) of Schedule 11”, substitute the words “section 28 of the 1996 Act”.
13. In rule 22—
 - (a) in paragraph (1), for the words “rule 30”, substitute the words “any direction of a Minister of the Crown under rule 30A(1) or order of the Appeal Tribunal under rule 30A(2)(a) read with rule 30A(1),”; and
 - (b) omit paragraph (2).
14. In rule 23—
 - (a) in paragraph (1), for the words “paragraph 18A of Schedule 11”, substitute the words “section 31 of the 1996 Act”; and
 - (b) in paragraph (6), for the words “rule 30”, substitute the words “any direction of a Minister of the Crown under rule 30A(1) or order of the Appeal Tribunal under rule 30A(2)(a) read with rule 30A(1),”.
15. In rule 23A(1), for the words “Employment Tribunals Act 1996”, substitute the words “1996 Act”.
16. In rule 26, for the words “or section 136A”, substitute the words—

“, section 33 of the 1996 Act or regulation 20 or 21 of the 1999 Regulations”.
17. In rule 27, after paragraph (1) insert—

“(1A) Where—

 - (a) a Minister has at any stage issued a direction under rule 30A(1)(b) or (c) (exclusion of a party or his representative), or the Appeal Tribunal has at any stage made an order under rule 30A(2)(a) read with rule 30A(1)(b) or (c); and
 - (b) the Appeal Tribunal is considering whether to impose, or has imposed, a requirement under paragraph (1) on any person,

the Minister (whether or not he is a party to the proceedings) may make an application to the Appeal Tribunal objecting to the imposition of a requirement under paragraph (1) or, where a requirement has been imposed, an application to vary or set aside the requirement, as the case may be. The Appeal Tribunal shall hear and determine the Minister's application in private and the Minister shall be entitled to address the Appeal Tribunal thereon. The application shall be made by notice to the Registrar and the Registrar shall give notice of the application to each party.”.

18. In rule 29—

(a) in paragraph (1)—

(i) for the words “rule 30”, substitute the words “any direction of a Minister of the Crown under rule 30A(1)(a) or order of the Appeal Tribunal under rule 30A(2) (a) read with rule 30A(1)(a),”; and

(ii) for the words “paragraph 16 of Schedule 11”, substitute the words “section 28 of the 1996 Act”; and

(b) for paragraph (2), substitute—

“(2) Notwithstanding paragraph (1), the Appeal Tribunal may sit in private for the purpose of 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 by virtue of any enactment;

(b) 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, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of the 1992 Act, cause substantial injury to any undertaking of his or in which he works.”.

19. For rule 30, substitute—

“Duty of Appeal Tribunal concerning disclosure of information

30. When exercising its functions, the Appeal Tribunal shall ensure that information is not disclosed contrary to the interests of national security.

Proceedings in cases concerning national security

30A.—(1) A Minister of the Crown (whether or not he is a party to the proceedings) may, if he considers it expedient in the interests of national security, direct the Appeal Tribunal by notice to the Registrar to—

(a) sit in private for all or part of particular Crown employment proceedings;

(b) exclude any party who was the applicant in the proceedings before the employment tribunal from all or part of particular Crown employment proceedings;

(c) exclude the representatives of any party who was the applicant in the proceedings before the employment tribunal from all or part of particular Crown employment proceedings;

(d) take steps to conceal the identity of a particular witness in particular Crown employment proceedings.

(2) The Appeal Tribunal may, if it considers it expedient in the interests of national security, by order—

(a) do anything of a kind which the Appeal Tribunal can be required to do by direction under paragraph (1) of this rule;

(b) direct any person to whom any document (including any decision or record of the proceedings) has been provided for the purposes of the proceedings not to disclose any such document or the content thereof—

- (i) to any excluded person;
 - (ii) in any case in which a direction has been given under paragraph (1)(a) or an order has been made under paragraph (2)(a) read with paragraph (1)(a), to any person excluded from all or part of the proceedings by virtue of such direction or order; or
 - (iii) in any case in which a Minister of the Crown has informed the Registrar in accordance with paragraph (3) that he wishes to address the Appeal Tribunal with a view to the Tribunal making an order under paragraph (2)(a) read with paragraph (1)(b) or (c), to any person who may be excluded from all or part of the proceedings by virtue of such an order, if an order is made, at any time before the Appeal Tribunal decides whether or not to make such an order;
- (c) take steps to keep secret all or part of the reasons for any order it makes.

The Appeal Tribunal shall keep under review any order it makes under this paragraph.

(3) In any proceedings in which a Minister of the Crown considers that it would be appropriate for the Appeal Tribunal to make an order as referred to in paragraph (2), he shall (whether or not he is a party to the proceedings) be entitled to appear before and to address the Appeal Tribunal thereon. The Minister shall inform the Registrar by notice that he wishes to address the Appeal Tribunal and the Registrar shall copy the notice to the parties.

(4) In any proceedings in which there is an excluded person, the Appeal Tribunal shall inform the Attorney General or, in the case of an appeal from an employment tribunal in Scotland, the Advocate General for Scotland, of the proceedings before it with a view to the Attorney General (or, as the case may be, the Advocate General), if he thinks it fit to do so, appointing a special advocate to represent the interests of the person who was the applicant in the proceedings before the employment tribunal in respect of those parts of the proceedings from which—

- (a) any representative of his is excluded;
- (b) both he and his representative are excluded; or
- (c) he is excluded, where he does not have a representative.

(5) A special advocate shall have a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990^(a), or, in the case of an appeal from an employment tribunal in Scotland, shall be—

- (a) an advocate; or
- (b) a solicitor who has by virtue of section 25A of the Solicitors (Scotland) Act 1980^(b) rights of audience in the Court of Session or the High Court of Justiciary.

(6) Where the excluded person is a party to the proceedings, he shall be permitted to make a statement to the Appeal Tribunal before the commencement of the proceedings, or the part of the proceedings, from which he is excluded.

(7) Except in accordance with paragraphs (8) to (10), the special advocate may not communicate directly or indirectly with any person (including an excluded person)—

- (a) (except in the case of the Appeal Tribunal or the party who was the respondent in the proceedings before the employment tribunal) on any matter contained in the documents referred to in rule 3(5), 3(6), 6(7) or 6(8)(b); or
- (b) (except in the case of a person who was present) on any matter discussed or referred to during any part of the proceedings in which the Appeal Tribunal sat in private pursuant to a direction of the Minister under paragraph (1)(a) or an order of the Appeal Tribunal under paragraph (2)(a) read with paragraph (1)(a).

(8) The special advocate may apply for directions from the Appeal Tribunal authorising him to seek instructions from, or otherwise to communicate with, an excluded person—

- (a) on any matter contained in the documents referred to in rule 3(5), 3(6), 6(7) or 6(8)(b); or

(a) 1990 c. 41.

(b) 1980 c. 46.

(b) on any matter discussed or referred to during any part of the proceedings in which the Appeal Tribunal sat in private as referred to in paragraph (7)(b).

(9) An application under paragraph (8) shall be made by presenting to the Registrar a notice of application, which shall state the title of the proceedings and set out the grounds of the application.

(10) The Registrar shall notify the Minister of an application for directions under paragraph (8) and the Minister shall be entitled to address the Appeal Tribunal on the application.

(11) In these rules, in any case in which a special advocate has been appointed in respect of a party, any reference to a party shall (save in those references specified in paragraph (12)) include the special advocate.

(12) The references mentioned in paragraph (11) are those in rules 5 and 18, the first and second references in rule 27(1A), paragraphs (1) and (6) of this rule, the first reference in paragraph (3) of this rule, rule 34(1), the reference in item 4 of Form 1, and in item 4 of Form 1A, in the Schedule to these Rules.”.

20. In rule 31—

(a) in paragraph (1)(a), for the words “section 136A”, substitute the words “section 33 of the 1996 Act”;

(b) at the end of paragraph (1)(a), omit the word “or”;

(c) at the end of paragraph (1)(b), insert—

“(c) in the case of an order imposing a penalty notice under regulation 20 or 21 of the 1999 Regulations, on the Secretary of State; or

(d) in the case of an order disposing of an appeal from the CAC made under regulation 38(8) of the 1999 Regulations, on the Chairman of the CAC”;

(d) at the beginning of paragraph (2), insert the words “Subject to rule 31A.”.

21. After rule 31, insert—

“Reasons for orders in cases concerning national security

31A.—(1) Paragraphs (1) to (5) of this rule apply to the document setting out the reasons for the Appeal Tribunal’s order prepared under rule 31(2) or any reasoned judgment of the Appeal Tribunal as referred to in rule 31(2), in any particular Crown employment proceedings in which a direction of a Minister of the Crown has been given under rule 30A(1)(a), (b) or (c) or an order of the Appeal Tribunal has been made under rule 30A(2)(a) read with rule 30A(1)(a), (b) or (c).

(2) Before the Appeal Tribunal gives its reasons in writing for any order or delivers any reasoned judgment, the Registrar shall send a copy of the reasons or judgment to the Minister.

(3) If the Minister considers it expedient in the interests of national security, he may—

(a) direct the Appeal Tribunal that the document containing its reasons for any order or its reasoned judgment shall not be disclosed to any person who was excluded from all or part of the proceedings and to prepare a further document setting out the reasons for its order, or a further reasoned judgment, but with the omission of such reasons as are specified in the direction; or

(b) direct the Appeal Tribunal that the document containing its reasons for any order or its reasoned judgment shall not be disclosed to any person who was excluded from all or part of the proceedings, but that no further document setting out the Appeal Tribunal’s reasons for its order or further reasoned judgment should be prepared.

(4) Where the Minister has directed the Appeal Tribunal in accordance with paragraph (3)(a), the document prepared pursuant to that direction shall be marked in each place where an omission has been made. The document may then be given by the Registrar to the parties.

(5) The Registrar shall send the document prepared pursuant to a direction of the Minister in accordance with paragraph (3)(a) and the full document without the omissions made pursuant to that direction—

- (a) to whichever of the appellant and the respondent was not the applicant in the proceedings before the employment tribunal;
- (b) if he was not an excluded person, to the person who was the applicant in the proceedings before the employment tribunal and, if he was not an excluded person, to his representative;
- (c) if applicable, to the special advocate; and
- (d) where there are proceedings before a superior court relating to the order in question, to that court.

(6) Where the Appeal Tribunal intends to take steps under rule 30A(2)(c) to keep secret all or part of the reasons for any order it makes, it shall send the full reasons for its order to the persons listed in sub-paragraphs (a) to (d) of paragraph (5), as appropriate.”.

22. In rule 34(2), for the words “taxing officer” substitute the words “costs officer”.

23. At the end of rule 37, insert—

“(4) An application for an extension of the time prescribed for the institution of an appeal under rule 3 shall not be heard until the notice of appeal has been served on the Appeal Tribunal.”.

24. In the Schedule, after Form 1, insert—

“FORM 1A

Rule 3

Notice of Appeal from the CAC made pursuant to regulation 38(8) of the Transnational Information and Consultation of Employees Regulations 1999

1. The appellant is *(name and address of appellant)*.
2. Any communication relating to this appeal may be sent to the appellant at *(appellant’s address for service, including telephone number if any)*.
3. The appellant appeals from *(here give particulars of the decision, declaration or order of the CAC from which the appeal is brought including the date)*.
4. The parties to the proceedings before the CAC, other than the appellant, were *(names and addresses of other parties to the proceedings resulting in decision appealed from)*.
5. A copy of the CAC’s decision, declaration or order appealed from is attached to this notice.
6. The grounds upon which this appeal is brought are that the CAC erred in law in that *(here set out in paragraphs the various grounds of appeal)*.

Date

Signed”.

25. In the Schedule after Form 4 insert—

Application under regulation 20 or 21 of the Transnational Information and Consultation of Employees Regulations 1999

1. The applicant is (*name and address of applicant*)
2. Any communication relating to this application may be sent to the applicant at (*state address for service, including telephone number, if any*).
3. The application is made against (*state identity or, where applicable, identities of respondents*) who is/are, or is/are representative of, the central or local management/the European Works Council/one or more information and consultation representatives (*delete what does not apply*).
4. The address(es) of the respondent(s) is/are
5. My complaint against the respondent(s) is that it/they failed to comply with its/their obligations under regulation 20 or 21 of the Transnational Information and Consultation of Employees Regulations 1999 as follows (*give particulars, set out in paragraphs and making reference to the specific provisions in the 1999 Regulations alleged to have been breached*).

Date

Signed”.

26. In the Schedule, after Form 5, insert—

Notice of Appearance to the Employment Appeal Tribunal under regulation 20 or 21 of the Transnational Information and Consultation of Employees Regulations 1999

1. The respondent is (*name and address of respondent*)
2. Any communication relating to this application may be sent to the respondent at (*respondent’s address for service, including telephone number, if any*)
3. The respondent intends to resist the application of (*here give the name or description of the applicant*)

The grounds on which the respondent will rely are as follows: (*give particulars, set out in paragraphs and making reference to the specific provisions in the Transnational Information and Consultation of Employees Regulations 1999 alleged to have been breached*)

Date

Signed

Position in respondent company or undertaking:

(*Where appropriate give position in respondent central or local management or position held in relation to respondent Works Council*)”.

27. In the Schedule in Forms 6 and 7, for the words “section 136A of the Employment Protection (Consolidation) Act 1978”, substitute the words “section 33 of the 1996 Act”.

Transitional provision

28. The amendments to the Employment Appeal Tribunal Rules 1993 made by these Rules shall apply in relation to all proceedings to which they relate, irrespective of when those proceedings were commenced.

EXPLANATORY NOTE

(This note is not part of the Rules)

These rules amend the Employment Appeal Tribunal Rules 1993 (S.I. 1993/2854) (“the 1993 Rules”). In addition to minor and drafting changes and the updating of statutory references, the rules make the following changes.

Provision is made for appeals from decisions or orders of the Central Arbitration Committee (“CAC”) under the Transnational Information and Consultation of Employees Regulations 1999 (S.I. 1999/3323) (“the 1999 Regulations”) and for first instance complaints under those Regulations. Rule 3 of the 1993 Rules is substituted by a new rule 3 which now provides for institution of appeals under the 1999 Regulations. Rule 4 (service of notice of appeal), rule 5 (respondents to appeals), rule 6 (respondent’s answer and notice of cross-appeal), rule 7 (disposal of appeal), rule 26 (default by parties) and rule 31 (orders) of the 1993 Rules are each amended to take account of appeals from decisions or orders of the CAC under the 1999 Regulations. New rules 16A to 16D are inserted into the 1993 Rules (see rule 9) to provide for first instance complaints under regulation 20 or 21 of the 1999 Regulations (failure to establish, or dispute concerning, European Works Council or information and consultation procedure). Rules 24 to 26 insert new forms into the Schedule to the 1993 Rules to be used in appeals or complaints in connection with the 1999 Regulations.

References in the 1993 Rules to procedure and composition of the Appeal Tribunal in cases involving national security have been replaced by more detailed procedural provision to deal with appeals from employment tribunals involving national security. Rules 3, 4, and 6 are amended to make provision for the documents to be supplied to the Appeal Tribunal in such cases. Rule 30 is replaced by a new rule concerning disclosure of information. The main provisions are found in new rule 30A, which enables a Minister to direct, or the tribunal to order, that in cases concerning national security, a party or his representative be excluded, that the case be heard in private and that witnesses’ identities be concealed. The Attorney General or the Advocate General for Scotland may appoint a special advocate to represent the party’s interests in the event of his, or his representative’s, exclusion. New rule 31A provides for disclosure of the document recording the Appeal Tribunal’s order in national security cases.

Rule 5(a) of the 1993 Rules (respondents to appeals) is amended by the addition of references to sections 45D, 56A and 108C of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (“the 1992 Act”). These sections, which were inserted into the 1992 Act by Schedule 6 to the Employment Relations Act 1999, provide that an appeal lies to the Employment Appeal Tribunal on any question of law arising in any proceedings before or arising from certain decisions of the Certification Officer. Rule 5(b) is amended by the addition of section 126 of the 1992 Act, which provides for an appeal against a decision of the Certification Officer.

Rule 37 of the 1993 Rules is amended by the insertion of a paragraph (4), so that applications for extensions of the time prescribed for instituting an appeal will not be heard until a notice of appeal has been served.

The rules contain a transitional provision at rule 28, to the effect that the amendments to the 1993 Rules apply to all proceedings, irrespective of when they were commenced.

£2.50

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Acts of Parliament

E 0633 04/01 ON (MFK)