
STATUTORY INSTRUMENTS

1994 No. 538

INDUSTRIAL TRIBUNALS

The Industrial Tribunals (Constitution and Rules of Procedure) (Scotland) (Amendment) Regulations 1994

<i>Made</i>	- - - -	<i>3rd March 1994</i>
<i>Laid before Parliament</i>		<i>9th March 1994</i>
<i>Coming into force</i>	- -	<i>1st April 1994</i>

The Secretary of State, in exercise of the powers conferred on him by section 128(1), section 154(3) and paragraphs 1, 1A and 1B of Schedule 9 to the Employment Protection (Consolidation) Act 1978(1), and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Industrial Tribunals (Constitution and Rules of Procedure) (Scotland) (Amendment) Regulations 1994 and come into force on 1st April 1994.

(2) In these Regulations, a reference to a rule in a Schedule is a reference to a rule in a Schedule to the Industrial Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 1993(2).

Amendments

2. In rule 6(1) in Schedule 1, after “motion,” insert “hear and”.
3. In rule 4(1) (b) in Schedule 1, for “require one party to grant to another”, substitute “grant to a party”.
4. In rule 7 in Schedule 1, after paragraph (9), insert—

(1) 1978 c. 44; Section 128 was amended by the Employment Act 1980 (c. 42) (the 1980 Act), Schedule 1, paragraph 16, by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46 and by the Trade Union Reform and Employment Rights Act 1993 (c. 19) (the 1993 Act), section 36 and Schedule 1.

(2) Paragraph 1 of Schedule 9 was amended by the 1980 Act, Schedule 1, paragraph 26; by the Equal Pay (Amendment) Regulations 1983 (S.I.1983/1794), regulation 3; by the Employment Act 1989 (c. 38), Schedule 6, paragraph 26 and by the 1993 Act, section 40 and Schedule 8, paragraph 28(a). Paragraph 1A was inserted by the Employment Act 1989, section 20 and was amended by the 1993 Act, Schedule 8, paragraph 28(b). Paragraph 1B was inserted by the 1993 Act, Schedule 8, paragraph 28(c).

Status: This is the original version (as it was originally made).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

“(10) Paragraph (9) does not apply where, acting pursuant to a direction issued by a Minister of the Crown in accordance with section 128(6) of the 1978 Act, the President has conducted a pre-hearing review alone.”.

5. In rule 10(10)(a) in Schedule 1, for “reviewed, revoked or varied by certificate”, substitute “revoked or varied under the chairman’s hand”.

6. In Rule 9(2E) in Schedule 2—

(a) for “it requires”, substitute “determining whether to require”, and

(b) omit the second sentence.

Transitional provisions

7. The rules amended by regulations 2, 3, 4 and 5 apply in their amended form to all proceedings to which they relate regardless of when the proceedings were commenced.

8. Rule 9 (2E) in Schedule 2 applies in its amended form in relation to all proceedings in which the tribunal exercises its discretion under the rule to hear evidence upon and permit the parties to address it upon the issue referred to in the rule (defence of genuine material factor) where the first day of the hearing at which such evidence is heard or the tribunal is so addressed falls on or after 1st April 1994.

Signed by order of the Secretary of State

Department of Employment
3rd March 1994

Ann Widdecombe
Parliamentary Under-Secretary of State,

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which come into force on 1st April 1994 and apply to industrial tribunal proceedings in Scotland, amend certain rules of procedure contained in the Industrial Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 1993 (S. I.1993/2688) (the “principal regulations”). The principal regulations are the main regulations establishing industrial tribunals and setting out the procedures they are to follow.

Regulations 2 and 5 correct minor drafting errors in rules 6(1) and 10(10)(a) in Schedule 1 to the principal regulations.

Regulation 3 amends rule 4(1)(b) in Schedule 1 to the principal regulations so that tribunals have the same power to grant recovery or inspection of documents against a person who is not a party to the proceedings as a sheriff.

Rule 7(9) in Schedule 1 to the principal regulations prevents a member of a tribunal which has conducted a pre-hearing review from being a member of the tribunal which hears the originating application. Regulation 4 ensures that where the President of the Industrial Tribunals (Scotland) has conducted a pre-hearing review alone because a Minister of the Crown has issued a direction under primary legislation that the proceedings be heard and determined by the President alone on the grounds of national security, the President may hear and determine the originating application alone notwithstanding rule 7(9).

Regulation 6 amends rule 9(2E) in Schedule 2 to the principal regulations which applies only in proceedings involving an equal value claim. The main effect of the changes is that where a tribunal has considered the “material factor” defence before deciding whether to require an expert’s report, it will be precluded from considering that defence again after the expert has submitted his report other than in exceptional circumstances.

The Regulations contain transitional provisions.