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## EXPLANATORY NOTE

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

These Regulations re-enact the Employment Tribunals (Constitution and Procedure) (Scotland) Regulations 1993 (the “1993 Regulations”) with amendments. In addition to minor and drafting amendments, re-numbering and the updating of statutory and other references, these Regulations make the following changes of substance.

Regulation 2 contains new provisions in paragraphs (6) to (10) setting out how time limits in the Regulations and in documents issued under them are to be calculated. Examples are given for interpretation of the general rules. Regulations 3 and 5 are amended to enable the President of the Employment Tribunals (Scotland) and the panel of tribunal chairmen to be persons legally qualified not only in Scotland but in England and Wales or Northern Ireland. Regulations 6 and 7 are new and provide for the selection of panels of tribunal chairmen and members to hear national security cases and for modifications of section 4 of the Employment Tribunals Act 1996 (the “1996 Act”) (composition of a tribunal) in such cases. Regulation 9 (composition of tribunals) is amended so that the tribunal is to be composed of a chairman and members taken from the specialist national security panels in cases involving national security.

Regulation 10 is new and inserts an overriding objective into the rules of procedure. Regulation 14 contains a transitional provision stating that the new regulations apply in respect of all cases, irrespective of when they were commenced. Regulation 15 revokes the instruments listed in Schedule 7, namely the 1993 Regulations and the instruments which amended them.

Schedule 1 contains the rules of procedure which apply to all employment tribunal proceedings in the absence of other provision. Rules 1 and 3 are amended to make it clear that more than one originating application or notice of appearance may be presented in a single document. Paragraphs (3) and (4) of rule 3 are omitted.

Rule 4 of Schedule 1 is a consolidation and simplification of rules 4 and 16 of Schedule 1 to the 1993 Regulations, now headed “case management”. Paragraph (3) is new and provides that directions may relate in particular to evidence, including witness statements. Failure to comply with a direction may now lead to the penalties in paragraph (8). In rule 7(4) of Schedule 1 (pre-hearing review), the maximum amount of the deposit which may be imposed following a pre-hearing review has been increased from £150 to £500. Rule 8 of Schedule 1 is new and contains the powers available to the Minister or the tribunal in national security cases to direct or order that the tribunal sit in private, that the applicant or his representative be excluded or that witnesses' identities be concealed. Where one of those powers is exercised, or where the Minister addresses the tribunal with a view to it exercising one of those powers, the modifications to Schedule 1 set out in Schedule 2 apply. Rule 8 also imposes a general duty on the tribunal concerning disclosure of information contrary to the interests of national security. Rule 9 of Schedule 1 is new and provides that tribunal proceedings for unfair dismissal may be adjourned pending the outcome of interlocutory civil proceedings under section 219 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (protection from certain tort liabilities).

Rule 14(1) of Schedule 1 (expenses) is amended to make it clear that the unreasonable behaviour of a party's representative may be taken into account when awarding expenses against that party. The tribunal is also now under a duty to consider an award of expenses in the circumstances described in rule 14(1), and these include circumstances where proceedings which have no reasonable prospect of success have been pursued. In rule 14(3), the maximum amount of expenses which a tribunal may award without taxation is increased from £500 to £10,000. In rule 15(2) of Schedule 1 (miscellaneous

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powers), the term “frivolous” has been replaced with “misconceived” (defined in regulation 2(2)) and “unreasonable” in sub-paragraphs (c) and (d) respectively. Those paragraphs permit the tribunal to strike out applications or notices of appearance in certain circumstances.

Rule 18 of Schedule 1 is new and provides for the Secretary of the Office of Tribunals to give notice to the Advocate General for Scotland and the Lord Advocate in any proceedings in which a devolution issue arises, so that they may take part in the proceedings so far as they relate to the devolution issue. Rule 23 (notices etc.) is amended to provide for their addresses for service of notices. There are corresponding new rules and amendments on devolution issues in Schedule 4 at rules 11 and 16, Schedule 5 at rules 10 and 15, and Schedule 6 at rules 8 and 14.

Schedule 2 is new and contains the modifications and insertions which apply to Schedule 1 when a power under rule 8(1), (2) or (3) is exercised (national security). It provides for the Advocate General for Scotland to appoint a special advocate to represent the applicant’s interests in the event of his, or his representative’s exclusion (rule 7A). Provision is also made for dealing with the reasons for the tribunal’s decision in national security cases (rule 7B).

Part I of Schedule 3 contains modifications of the rules in Schedule 1 which apply in equal value cases. Only those paragraphs of the modified rules which are different from those in Schedule 1 are now specified in Schedule 3. In cases involving an equal value claim and in which a power under rule 8(1), (2) or (3) of Schedule 1 is exercised, the rules in Schedule 1 are modified in accordance with both Schedule 2 and Part I of Schedule 3, but they are subject to the modifications in Part II of Schedule 3.

The rules for use in proceedings involving appeals against the imposition of industrial levy notices issued under the Industrial Training Act 1982 (c. 10) are now in Schedule 4. The rules for use in proceedings involving appeals against improvement or prohibition notices issued under the Health and Safety at Work etc. Act 1974 (c. 37) are now in Schedule 5. The rules for use in proceedings involving appeals against non-discrimination notices issued under the Sex Discrimination Act 1975 (c. 65) and the Race Relations Act 1976 (c. 74) are now in Schedule 6. Appeals against such notices issued by the Disability Rights Commission under the Disability Discrimination Act 1995 (c. 50) are now included in Schedule 6.

A regulatory impact assessment of the costs and benefits that will result from these Regulations will be available in the Libraries of the Houses of Parliament when the Regulations are laid before Parliament, and from Lorraine Hamid, Employment Relations Directorate, 1 Victoria Street, London, SW1H 0ET.