
STATUTORY INSTRUMENTS

2004 No. 1861

EMPLOYMENT TRIBUNALS

**The Employment Tribunals (Constitution
and Rules of Procedure) Regulations 2004**

<i>Made</i>	- - - -	<i>19th July 2004</i>
<i>Laid before Parliament</i>		<i>20th July 2004</i>
<i>Coming into force</i>	- -	<i>1st October 2004</i>

The Secretary of State, in exercise of the powers conferred on her by section 24(2) of the Health and Safety at Work etc. Act 1974⁽¹⁾, sections 1(1), 4(6), and (6A), 7(1), (3), (3ZA), (3A), and (5), 7A(1) and (2), 9(1), (2) and (4), 10(2), (5), (6) and (7), 10A(1), 11(1), 12(2), 13, 13A(1) and (2), 19 and 41(4) of the Employment Tribunals Act 1996⁽²⁾ and paragraph 36 of Schedule 8 to the Government of Wales Act 1998⁽³⁾, and paragraph 37 of Schedule 6 to the Scotland Act 1998⁽⁴⁾, and after consultation with the Council of Tribunals, in accordance with section 8(1) of the Tribunals and Inquiries Act 1992⁽⁵⁾, hereby makes the following Regulations: —

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- (1) 1974 c. 37; “prescribed” is defined by section 53(1) of the Act as meaning prescribed by regulations.
- (2) 1996 c. 17; 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”. Section 4(6) was amended by paragraph 12(4) of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998 and section 4(6A) was inserted by section 3(6) of that Act. Section 7 was interpreted by section 239(4) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), as inserted by paragraph 1 of Schedule 5 to the Employment Relations Act 1999 (c. 26). Paragraph 7(3)(f)(i) was repealed by paragraph 14(2) of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998 and paragraph 7(3)(f)(i) was inserted by section 24(1) of the Employment Act 2002 (c. 22) and section 7(3ZA) was inserted by section 25 of that Act. Sections 7(3A) to 7(3C) were inserted by section 2 of the Employment Rights (Dispute Resolution) Act 1998 and section 7(3A) was then substituted by section 26 of the Employment Act 2002. Section 7A was inserted by section 27 of the Employment Act 2002. The sum in paragraph (a) of section 9(2) was substituted by article 2 of S.I. 2001/237 and section 9(2A) was inserted by section 28 of the Employment Act 2002. Section 9(4) was amended by paragraph 15 of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998. Section 10 was substituted, and section 10A was inserted, by paragraph 3 of Schedule 8 to the Employment Relations Act 1999. Section 13(1) was substituted by subsections (1), (1A) to (1C), by section 22(1) of the Employment Act 2002. Section 13(2) was amended by paragraph 4 of Part III of Schedule 4 to the Employment Relations Act 1999 and section 13A was inserted by section 22(2) of the Employment Act 2002. Section 19(1) was numbered as such by section 24(4) of the Employment Act 2002, and was amended by paragraph 23(1) and (3) of Schedule 7 and Schedule 8 of that Act. Section 19(2) was inserted by section 24(4) of the Employment Act 2002.
- (3) 1998 c. 38.
- (4) 1998 c. 46.
- (5) 1992 c. 53.

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 and the Rules of Procedure contained in Schedules 1, 2, 3, 4 and 5 to these Regulations may be referred to, respectively, as —

- (a) the Employment Tribunals Rules of Procedure;
- (b) the Employment Tribunals (National Security) Rules of Procedure;
- (c) the Employment Tribunals (Levy Appeals) Rules of Procedure;
- (d) the Employment Tribunals (Health and Safety – Appeals against Improvement and Prohibition Notices) Rules of Procedure; and
- (e) the Employment Tribunals (Non-Discrimination Notices Appeals) Rules of Procedure.

(2) These Regulations shall come into force on 1 October 2004.

(3) Subject to the savings in regulation 20, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001⁽⁶⁾ and the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001⁽⁷⁾ are revoked.

Interpretation

2. In these Regulations and in Schedules 1, 2, 3, 4 and 5: —

“ACAS” means the Advisory, Conciliation and Arbitration Service referred to in section 247 of TULR(C)A;

“appointing office holder” means, in England and Wales, the Lord Chancellor, and in Scotland, the Lord President;

“chairman” means the President or a member of the panel of chairmen appointed in accordance with regulation 8(3)(a), or, for the purposes of national security proceedings, a member of the panel referred to in regulation 10 selected in accordance with regulation 11(a), and in relation to particular proceedings it means the chairman to whom the proceedings have been referred by the President, Vice President or a Regional Chairman;

“compromise agreement” means an agreement to refrain from continuing proceedings where the agreement meets the conditions in section 203(3) of the Employment Rights Act;

“constructive dismissal” has the meaning set out in section 95(1)(c) of the Employment Rights Act;

“Disability Discrimination Act” means the Disability Discrimination Act 1995⁽⁸⁾;

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000⁽⁹⁾;

“Employment Act” means the Employment Act 2002⁽¹⁰⁾;

“Employment Rights Act” means the Employment Rights Act 1996⁽¹¹⁾;

“Employment Tribunals Act” means the Employment Tribunals Act 1996⁽¹²⁾;

“Employment Tribunal Office” means any office which has been established for any area in either England & Wales or Scotland specified by the President and which carries out administrative functions in support of functions being carried out by a tribunal or chairman,

⁽⁶⁾ S.I. 2001/1171.

⁽⁷⁾ S.I. 2001/1170.

⁽⁸⁾ 1995 c. 50.

⁽⁹⁾ 2000 c. 7.

⁽¹⁰⁾ 2002 c. 22.

⁽¹¹⁾ 1996 c. 18.

⁽¹²⁾ 1996 c. 17.

and in relation to particular proceedings it is the office notified to the parties in accordance with rule 61(3) of Schedule 1;

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“Equal Pay Act” means the Equal Pay Act 1970⁽¹³⁾;

“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 54(1)(b) or (c) of Schedule 1, or
- (b) an order of the tribunal under rule 54(2)(a) read with 54(1)(b) or (c) of Schedule 1;

“hearing” means a case management discussion, pre-hearing review, review hearing or Hearing (as those terms are defined in Schedule 1) or a sitting of a chairman or a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawful to enable the chairman or tribunal to reach a decision on any question;

“legally represented” has the meaning set out in rule 38(5) of Schedule 1;

“Lord President” means the Lord President of the Court of Session;

“misconceived” includes having no reasonable prospect of success;

“national security proceedings” means proceedings in relation to which a direction is given under rule 54(1) of Schedule 1, or an order is made under rule 54(2) of that Schedule;

“old (England & Wales) regulations” means the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001;

“old (Scotland) regulations” means the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001;

“panel of chairmen” means a panel referred to in regulation 8(3)(a);

“President” means, in England and Wales, the person appointed or nominated by the Lord Chancellor to discharge for the time being the functions of the President of Employment Tribunals (England and Wales), and, in Scotland, the person appointed or nominated by the Lord President to discharge for the time being the functions of the President of Employment Tribunals (Scotland);

“Race Relations Act” means the Race Relations Act 1976⁽¹⁴⁾;

“Regional Chairman” means a member of the panel of chairmen who has been appointed to the position of Regional Chairman in accordance with regulation 6 or who has been nominated to discharge the functions of a Regional Chairman in accordance with regulation 6;

“Register” means the Register of judgments and written reasons kept in accordance with regulation 17;

“Secretary” means a person for the time being appointed to act as the Secretary of employment tribunals either in England and Wales or in Scotland;

“Sex Discrimination Act” means the Sex Discrimination Act 1975⁽¹⁵⁾;

“special advocate” means a person appointed in accordance with rule 8 of Schedule 2;

“tribunal” means an employment tribunal established in accordance with regulation 5, and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President, Vice President or a Regional Chairman;

⁽¹³⁾ 1970 c. 41; section 2A was inserted by the Equal Pay (Amendment) Regulations 1983 (S.I. 1983/1794).

⁽¹⁴⁾ 1976 c. 74.

⁽¹⁵⁾ 1975 c. 65.

“TULR(C)A” means the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹⁶⁾;

“Vice President” means a person who has been appointed to the position of Vice President in accordance with regulation 7 or who has been nominated to discharge the functions of the Vice President in accordance with that regulation;

“writing” includes writing delivered by means of electronic communication.

Overriding objective

3.—(1) The overriding objective of these regulations and the rules in Schedules 1, 2, 3, 4 and 5 is to enable tribunals and chairmen to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable: —

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with the case in ways which are proportionate to the complexity or importance of the issues;
- (c) ensuring that it is dealt with expeditiously and fairly; and
- (d) saving expense.

(3) A tribunal or chairman shall seek to give effect to the overriding objective when it or he: —

- (a) exercises any power given to it or him by these regulations or the rules in Schedules 1, 2, 3, 4 and 5; or
- (b) interprets these regulations or any rule in Schedules 1, 2, 3, 4 and 5.

(4) The parties shall assist the tribunal or the chairman to further the overriding objective.

President of Employment Tribunals

4.—(1) There shall be a President of Employment Tribunals (England and Wales), responsible for the administration of justice by tribunals and chairmen in England and Wales, who shall be appointed by the Lord Chancellor and shall be a person described in paragraph (3).

(2) There shall be a President of Employment Tribunals (Scotland), responsible for the administration of justice by tribunals and chairmen in Scotland, who shall be appointed by the Lord President and shall be a person described in paragraph (3).

(3) A President shall be a person: —

- (a) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990⁽¹⁷⁾;
- (b) being an advocate or solicitor admitted in Scotland of at least seven years standing; or
- (c) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing.

(4) A President may resign his office by notice in writing to the appointing office holder.

(5) If the appointing office holder is satisfied that the President is incapacitated by infirmity of mind or body from discharging the duties of his office, or the President is adjudged to be bankrupt or makes a composition or arrangement with his creditors, the appointing office holder may revoke his appointment.

(6) The functions of President under these Regulations may, if he is for any reason unable to act or during any vacancy in his office, be discharged by a person nominated for that purpose by the appointing office holder.

⁽¹⁶⁾ 1992 c. 52.

⁽¹⁷⁾ 1990 c. 41.

Establishment of employment tribunals

5.—(1) Each President shall, in relation to that part of Great Britain for which he has responsibility, from time to time determine the number of tribunals to be established for the purposes of determining proceedings.

(2) The President, a Regional Chairman or the Vice President shall determine, in relation to the area specified in relation to him, at what times and in what places in that area tribunals and chairmen shall sit.

Regional Chairmen

6.—(1) The Lord Chancellor may from time to time appoint Regional Chairmen from the panel of full-time chairmen and each Regional Chairman shall be responsible to the President (England and Wales) for the administration of justice by tribunals and chairmen in the area specified by the President (England and Wales) in relation to him.

(2) The President (England and Wales) or the Regional Chairman for an area may from time to time nominate a member of the panel of full time chairmen to discharge for the time being the functions of the Regional Chairman for that area.

Vice President

7.—(1) The Lord President may from time to time appoint a Vice President from the panel of full time chairmen and the Vice President shall be responsible to the President (Scotland) for the administration of justice by tribunals and chairmen in Scotland.

(2) The President (Scotland) or the Vice President may from time to time nominate a member of the panel of full time chairmen to discharge for the time being the functions of the Vice President.

Panels of members of tribunals – general

8.—(1) There shall be three panels of members of Employment Tribunals (England and Wales), as set out in paragraph (3).

(2) There shall be three panels of members of Employment Tribunals (Scotland), as set out in paragraph (3).

(3) The panels referred to in paragraphs (1) and (2) are:—

- (a) a panel of full-time and part-time chairmen appointed by the appointing office holder consisting of persons —
 - (i) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (ii) being an advocate or solicitor admitted in Scotland of at least seven years standing; or
 - (iii) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing;
- (b) a panel of persons appointed by the Secretary of State after consultation with such organisations or associations of organisations representative of employees as she sees fit; and
- (c) a panel of persons appointed by the Secretary of State after consultation with such organisations or associations of organisations representative of employers as she sees fit.

(4) Members of the panels constituted under these Regulations shall hold and vacate office under the terms of the instrument under which they are appointed but may resign their office by notice in writing, in the case of a member of the panel of chairmen, to the appointing office holder and, in

any other case, to the Secretary of State; and any such member who ceases to hold office shall be eligible for reappointment.

(5) The President may establish further specialist panels of chairmen and persons referred to in paragraphs (3)(b) and (c) and may select persons from such specialist panels in order to deal with proceedings in which particular specialist knowledge would be beneficial.

Composition of tribunals - general

9.—(1) For each hearing, the President, Vice President or the Regional Chairman shall select a chairman, who shall, subject to regulation 11, be a member of the panel of chairmen, and the President, Vice President or the Regional Chairman may select himself.

(2) In any proceedings which are to be determined by a tribunal comprising a chairman and two other members, the President, Regional Chairman or Vice President shall, subject to regulation 11, select one of those other members from the panel of persons appointed by the Secretary of State under regulation 8(3)(b) and the other from the panel of persons appointed under regulation 8(3)(c).

(3) In any proceedings which are to be determined by a tribunal whose composition is described in paragraph (2) or, as the case may be, regulation 11(b), those proceedings may, with the consent of the parties, be heard and determined in the absence of any one member other than the chairman.

(4) The President, Vice President, or a Regional Chairman may at any time select from the appropriate panel another person in substitution for the chairman or other member of the tribunal previously selected to hear any proceedings before a tribunal or chairman.

Panels of members of tribunals – national security proceedings

10. In relation to national security proceedings, the President shall:—

- (a) select a panel of persons from the panel of chairmen to act as chairmen in such cases; and
- (b) select:—
 - (i) a panel of persons from the panel referred to in regulation 8(3)(b) as persons suitable to act as members in such cases; and
 - (ii) a panel of persons from the panel referred to in regulation 8(3)(c) as persons suitable to act as members in such cases.

Composition of tribunals – national security proceedings

11. In relation to national security proceedings:—

- (a) the President, the Regional Chairman or the Vice President shall select a chairman, who shall be a member of the panel selected in accordance with regulation 10(a), and the President, Regional Chairman or Vice President may select himself; and
- (b) in any such proceedings which are to be determined by a tribunal comprising a chairman and two other members, the President, Regional Chairman or Vice President shall select one of those other members from the panel selected in accordance with regulation 10(b)
 - (i) and the other from the panel selected in accordance with regulation 10(b)(ii).

Modification of section 4 of the Employment Tribunals Act (national security proceedings)

12.—(1) For the purposes of national security proceedings section 4 of the Employment Tribunals Act shall be modified as follows.

(2) In section 4(1)(a), for the words “in accordance with regulations made under section 1(1)” substitute the words “in accordance with regulation 11(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004”.

(3) In section 4(1)(b), for the words “in accordance with regulations so made” substitute the words “in accordance with regulation 11(b) of those Regulations”.

(4) In section 4(5), for the words “in accordance with Regulations made under section 1(1)” substitute the words “in accordance with regulation 10(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004”.

Practice directions

13.—(1) The President may make practice directions about the procedure of employment tribunals in the area for which he is responsible, including practice directions about the exercise by tribunals or chairmen of powers under these Regulations or the Schedules to them.

(2) The power of the President to make practice directions under paragraph (1) includes power:—

- (a) to vary or revoke practice directions;
- (b) to make different provision for different cases or different areas, including different provision for specific types of proceedings.

(3) The President shall publish a practice direction made under paragraph (1), and any revocation or variation of it, in such manner as he considers appropriate for bringing it to the attention of the persons to whom it is addressed.

Power to prescribe

14.—(1) The Secretary of State may prescribe —

- (a) one or more versions of a form, one of which shall be used by all claimants for the purpose of commencing proceedings in an employment tribunal (“claim form”) except any claim or proceedings listed in paragraph (3);
- (b) one or more versions of a form, one of which shall be used by all respondents to a claim for the purpose of responding to a claim before an employment tribunal (“response form”) except respondents to a claim or proceedings listed in paragraph (3); and
- (c) that the provision of certain information and answering of certain questions in a claim form or in a response form is mandatory in all proceedings save those listed in paragraph (3).

(2) The Secretary of State shall publish the forms and matters prescribed pursuant to paragraph (1) in such manner as she considers appropriate in order to bring them to the attention of potential claimants, respondents and their advisers.

(3) The proceedings referred to in paragraph (1) are:—

- (a) those referred to an employment tribunal by a court;
- (b) proceedings to which any of Schedules 3 to 5 apply; or
- (c) proceedings brought under any of the following enactments:—
 - (i) sections 19, 20 or 22 of the National Minimum Wage Act 1998⁽¹⁸⁾;
 - (ii) section 11 of the Employment Rights Act where the proceedings are brought by the employer.

Calculation of time limits

15.—(1) Any period of time for doing any act required or permitted to be done under any of the rules in Schedules 1, 2, 3, 4 and 5, or under any decision, order or judgment of a tribunal or a chairman, shall be calculated in accordance with paragraphs (2) to (6).

(18) 1998 c. 39.

(2) Where any act must or may be done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. For example, a respondent is sent a copy of a claim on 1st October. He must present a response to the Employment Tribunal Office within 28 days of the date on which he was sent the copy. The last day for presentation of the response is 29th October.

(3) Where any act must or may be done not less than a certain number of days before or after an event, the date of that event shall not be included in the calculation. For example, if a party wishes to submit representations in writing for consideration by a tribunal at a hearing, he must submit them not less than 7 days before the hearing. If the hearing is fixed for 8th October, the representations must be submitted no later than 1st October.

(4) Where the tribunal or a chairman gives any decision, order or judgment which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(5) In rule 14(4) of Schedule 1 the requirement to send the notice of hearing to the parties not less than 14 days before the date fixed for the hearing shall not be construed as a requirement for service of the notice to have been effected not less than 14 days before the hearing date, but as a requirement for the notice to have been placed in the post not less than 14 days before that date. For example, a hearing is fixed for 15th October. The last day on which the notice may be placed in the post is 1st October.

(6) Where any act must or may have been done within a certain number of days of a document being sent to a person by the Secretary, the date when the document was sent shall, unless the contrary is proved, be regarded as the date on the letter from the Secretary which accompanied the document. For example, a respondent must present his response to a claim to the Employment Tribunal Office within 28 days on the date of which he was sent a copy of the claim. If the letter from the Secretary sending him a copy of the claim is dated 1st October, the last day for presentation of the response is 29th October.

Application of Schedules 1-5 to proceedings

16.—(1) Subject to paragraphs (2) and (3), the rules in Schedule 1 shall apply in relation to all proceedings before an employment tribunal except where separate rules of procedure made under the provisions of any enactment are applicable.

(2) In proceedings to which the rules in Schedule 1 apply and in which any power conferred on the Minister, the tribunal or a chairman by rule 54 (national security proceedings) of Schedule 1 is exercised, Schedule 1 shall be modified in accordance with Schedule 2.

(3) The rules in Schedules 3, 4 and 5 shall apply to modify the rules in Schedule 1 in relation to proceedings which consist, respectively, in:—

- (a) an appeal by a person assessed to levy imposed under a levy order made under section 12 of the Industrial Training Act 1982⁽¹⁹⁾;
- (b) an appeal against an improvement or prohibition notice under section 24 of the Health and Safety at Work etc Act 1974; and
- (c) an appeal against a non-discrimination notice under section 68 of the Sex Discrimination Act, section 59 of the Race Relations Act or paragraph 10 of Schedule 3 to the Disability Rights Commission Act 1999⁽²⁰⁾.

(19) 1982 c. 10.

(20) 1999 c. 17.

Register

17.—(1) The Secretary shall maintain a Register which shall be open to the inspection of any person without charge at all reasonable hours.

(2) The Register shall contain a copy of all judgments and any written reasons issued by any tribunal or chairman which are required to be entered in the Register in accordance with the rules in Schedules 1 to 5.

(3) The Register, or any part of it, may be kept by means of a computer.

Proof of decisions of tribunals

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

Jurisdiction of tribunals in Scotland and in England & Wales

19.—(1) An employment tribunal in England or Wales shall only have jurisdiction to deal with proceedings (referred to as “English and Welsh proceedings”) where —

- (a) the respondent or one of the respondents resides or carries on business in England and Wales;
- (b) had the remedy been by way of action in the county court, the cause of action would have arisen wholly or partly in England and Wales;
- (c) the proceedings are to determine a question which has been referred to the tribunal by a court in England and Wales; or
- (d) in the case of proceedings to which Schedule 3, 4 or 5 applies, the proceedings relate to matters arising in England and Wales.

(2) An employment tribunal in Scotland shall only have jurisdiction to deal with proceedings (referred to as “Scottish proceedings”) where —

- (a) the respondent or one of the respondents resides or carries on business in Scotland;
- (b) the proceedings relate to a contract of employment the place of execution or performance of which is in Scotland;
- (c) the proceedings are to determine a question which has been referred to the tribunal by a sheriff in Scotland; or
- (d) in the case of proceedings to which Schedule 3, 4 or 5 applies, the proceedings relate to matters arising in Scotland.

Transitional provisions

20.—(1) These Regulations and Schedules 1 to 5 to them shall apply in relation to all proceedings to which they relate where those proceedings were commenced on or after 1 October 2004.

(2) These Regulations and Schedules 1 and 2 to them (with the exception of rules 1 to 3 and 38 to 48 of Schedule 1) shall apply to proceedings:—

- (a) which were commenced prior to 1 October 2004; and
- (b) to which Schedule 1 to either the old (England & Wales) regulations or the old (Scotland) regulations applied;

provided that a copy of the originating application was not sent to the respondent prior to 1 October 2004.

(3) In relation to the proceedings described in paragraph (2), the following provisions of Schedule 1 to the old (England & Wales) regulations or the old (Scotland) regulations (as the case may be) shall continue to apply:—

- (a) rule 1 (originating application);
- (b) rule 2 (action upon receipt of originating application) with the exception of paragraphs (2), (4) and (5) of that rule; and
- (c) rule 14 (costs).

(4) In relation to proceedings described in paragraph (2) but where a copy of the originating application was sent to the respondent prior to 1 October 2004, Schedules 1 and 2 to these Regulations shall apply with the exception of rules 1 to 9, 21 to 24, 33 and 38 to 48 of Schedule 1 and rules 2, 3 and 4 of Schedule 2.

(5) In relation to proceedings described in paragraph (4), the following provisions of the old (England & Wales) regulations or the old (Scotland) regulations (as the case may be) shall continue to apply:—

- (a) in Schedule 1:—
 - (i) rule 1 (originating application);
 - (ii) rule 2 (action upon receipt of originating application) with the exception of paragraphs (2), (4) and (5) of that rule;
 - (iii) rule 3 (appearance by respondent);
 - (iv) rule 8 (national security);
 - (v) rule 14 (costs); and
- (b) rule 1 of Schedule 2.

(6) In relation to proceedings commenced prior to 1 October 2004 and to which Schedule 4, 5 or 6 to the old (England & Wales) regulations or the old (Scotland) regulations (as the case may be) applied, the provisions of those schedules shall continue to apply to such proceedings.

Gerry Sutcliffe
Parliamentary Under Secretary of State for
Employment Relations, Competition and
Consumers,
Department of Trade and Industry

19th July 2004

SCHEDULE 1

Regulation 16

THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE

HOW TO BRING A CLAIM

Starting a claim

1.—(1) A claim shall be brought before an employment tribunal by the claimant presenting to an Employment Tribunal Office the details of the claim in writing. Those details must include all the relevant required information (subject to paragraph (5) of this rule and to rule 53 (Employment Agencies Act 1973)).

(2) The claim may only be presented to an Employment Tribunal Office in England and Wales if it relates to English and Welsh proceedings (defined in regulation 19(1)). The claim may only be presented to an Employment Tribunal Office in Scotland if it relates to Scottish proceedings (defined in regulation 19(2)).

(3) Unless it is a claim in proceedings described in regulation 14(3), a claim which is presented on or after 6 April 2005 must be presented on a claim form which has been prescribed by the Secretary of State in accordance with regulation 14.

(4) Subject to paragraph (5) and to rule 53, the required information in relation to the claim is —

- (a) each claimant's name;
- (b) each claimant's address;
- (c) the name of each person against whom the claim is made ("the respondent");
- (d) each respondent's address;
- (e) details of the claim;
- (f) whether or not the claimant is or was an employee of the respondent;
- (g) whether or not the claim includes a complaint that the respondent has dismissed the claimant or has contemplated doing so;
- (h) whether or not the claimant has raised the subject matter of the claim with the respondent in writing at least 28 days prior to presenting the claim to an Employment Tribunal Office;
- (i) if the claimant has not done as described in (h), why he has not done so.

(5) In the following circumstances the required information identified below is not required to be provided in relation to that claim —

- (a) if the claimant is not or was not an employee of the respondent, the information in paragraphs (4)(g) to (i) is not required;
- (b) if the claimant was an employee of the respondent and the claim consists only of a complaint that the respondent has dismissed the claimant or has contemplated doing so, the information in paragraphs (4)(h) and (i) is not required;
- (c) if the claimant was an employee of the respondent and the claim does not relate to the claimant being dismissed or a contemplated dismissal by the respondent, and the claimant has raised the subject matter of the claim with the respondent as described in paragraph (4)(h), the information in paragraph (4)(i) is not required.

(6) References in this rule to being dismissed or a dismissal by the respondent do not include references to constructive dismissal.

(7) Two or more claimants may present their claims in the same document if their claims arise out of the same set of facts.

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

(8) When section 32 of the Employment Act applies to the claim or part of one and a chairman considers in accordance with subsection (6) of section 32 that there has been a breach of subsections (2) to (4) of that section, neither a chairman nor a tribunal shall consider the substance of the claim (or the relevant part of it) until such time as those subsections have been complied with in relation to the claim or the relevant part of it.

ACCEPTANCE OF CLAIM PROCEDURE

What the tribunal does after receiving the claim

2.—(1) On receiving the claim the Secretary shall consider whether the claim or part of it should be accepted in accordance with rule 3. If a claim or part of one is not accepted the tribunal shall not proceed to deal with any part which has not been accepted (unless it is accepted at a later date). If no part of a claim is accepted the claim shall not be copied to the respondent.

(2) If the Secretary accepts the claim or part of it, he shall —

- (a) send a copy of the claim to each respondent and record in writing the date on which it was sent;
- (b) inform the parties in writing of the case number of the claim (which must from then on be referred to in all correspondence relating to the claim) and the address to which notices and other communications to the Employment Tribunal Office must be sent;
- (c) inform the respondent in writing about how to present a response to the claim, the time limit for doing so, what may happen if a response is not entered within the time limit and that the respondent has a right to receive a copy of any judgment disposing of the claim;
- (d) when any enactment relevant to the claim provides for conciliation, notify the parties that the services of a conciliation officer are available to them;
- (e) when rule 22 (fixed period for conciliation) applies, notify the parties of the date on which the conciliation officer's duty to conciliate ends and that after that date the services of a conciliation officer shall be available to them only in limited circumstances; and
- (f) if only part of the claim has been accepted, inform the claimant and any respondent which parts of the claim have not been accepted and that the tribunal shall not proceed to deal with those parts unless they are accepted at a later date.

When the claim will not be accepted by the Secretary

3.—(1) When a claim is required by rule 1(3) to be presented using a prescribed form, but the prescribed form has not been used, the Secretary shall not accept the claim and shall return it to the claimant with an explanation of why the claim has been rejected and provide a prescribed claim form.

(2) The Secretary shall not accept the claim (or a relevant part of one) if it is clear to him that one or more of the following circumstances applies —

- (a) the claim does not include all the relevant required information;
- (b) the tribunal does not have power to consider the claim (or that relevant part of it); or
- (c) section 32 of the Employment Act (complaints about grievances) applies to the claim or part of it and the claim has been presented to the tribunal in breach of subsections (2) to (4) of section 32.

(3) If the Secretary decides not to accept a claim or part of one for any of the reasons in paragraph (2), he shall refer the claim together with a statement of his reasons for not accepting it to a chairman. The chairman shall decide in accordance with the criteria in paragraph (2) whether the claim or part of it should be accepted and allowed to proceed.

(4) If the chairman decides that the claim or part of one should be accepted he shall inform the Secretary in writing and the Secretary shall accept the relevant part of the claim and then proceed to deal with it in accordance with rule 2(2).

(5) If the chairman decides that the claim or part of it should not be accepted he shall record his decision together with the reasons for it in writing in a document signed by him. The Secretary shall as soon as is reasonably practicable inform the claimant of that decision and the reasons for it in writing together with information on how that decision may be reviewed or appealed.

(6) Where a claim or part of one has been presented to the tribunal in breach of subsections (2) to (4) of section 32 of the Employment Act, the Secretary shall notify the claimant of the time limit which applies to the claim or the part of it concerned and shall inform the claimant of the consequences of not complying with section 32 of that Act.

(7) Except for the purposes of paragraph (6) and (8) or any appeal to the Employment Appeal Tribunal, where a chairman has decided that a claim or part of one should not be accepted such a claim (or the relevant part of it) is to be treated as if it had not been received by the Secretary on that occasion.

(8) Any decision by a chairman not to accept a claim or part of one may be reviewed in accordance with rules 34 to 36. If the result of such review is that any parts of the claim should have been accepted, then paragraph (7) shall not apply to the relevant parts of that claim and the Secretary shall then accept such parts and proceed to deal with it as described in rule 2(2).

(9) A decision to accept or not to accept a claim or part of one shall not bind any future tribunal or chairman where any of the issues listed in paragraph (2) fall to be determined later in the proceedings.

(10) Except in rule 34 (review of other judgments and decisions), all references to a claim in the remainder of these rules are to be read as references to only the part of the claim which has been accepted.

RESPONSE

Responding to the claim

4.—(1) If the respondent wishes to respond to the claim made against him he must present his response to the Employment Tribunal Office within 28 days of the date on which he was sent a copy of the claim. The response must include all the relevant required information. The time limit for the respondent to present his response may be extended in accordance with paragraph (4).

(2) Unless it is a response in proceedings described in regulation 14(3), any response presented on or after 6 April 2005 must be on a response form prescribed by the Secretary of State pursuant to regulation 14.

(3) The required information in relation to the response is —

- (a) the respondent's full name;
- (b) the respondent's address;
- (c) whether or not the respondent wishes to resist the claim in whole or in part; and
- (d) if the respondent wishes to so resist, on what grounds.

(4) The respondent may apply under rule 11 for an extension of the time limit within which he is to present his response. The application must be presented to the Employment Tribunal Office within 28 days of the date on which the respondent was sent a copy of the claim (unless the application is made under rule 33(1)) and must explain why the respondent cannot comply with the time limit. Subject to rule 33, the chairman shall only extend the time within which a response may be presented if he is satisfied that it is just and equitable to do so.

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(5) A single document may include the response to more than one claim if the relief claimed arises out of the same set of facts, provided that in respect of each of the claims to which the single response relates —

- (a) the respondent intends to resist all the claims and the grounds for doing so are the same in relation to each claim; or
- (b) the respondent does not intend to resist any of the claims.

(6) A single document may include the response of more than one respondent to a single claim provided that —

- (a) each respondent intends to resist the claim and the grounds for doing so are the same for each respondent; or
- (b) none of the respondents intends to resist the claim.

ACCEPTANCE OF RESPONSE PROCEDURE

What the tribunal does after receiving the response

5.—(1) On receiving the response the Secretary shall consider whether the response should be accepted in accordance with rule 6. If the response is not accepted it shall be returned to the respondent and (subject to paragraphs (5) and (6) of rule 6) the claim shall be dealt with as if no response to the claim had been presented.

(2) If the Secretary accepts the response he shall send a copy of it to all other parties and record in writing the date on which he does so.

When the response will not be accepted by the Secretary

6.—(1) Where a response is required to be presented using a prescribed form by rule 4(2), but the prescribed form has not been used, the Secretary shall not accept the response and shall return it to the respondent with an explanation of why the response has been rejected and provide a prescribed response form.

(2) The Secretary shall not accept the response if it is clear to him that any of the following circumstances apply —

- (a) the response does not include all the required information (defined in rule 4(3));
- (b) the response has not been presented within the relevant time limit.

(3) If the Secretary decides not to accept a response for either of the reasons in paragraph (2), he shall refer the response together with a statement of his reasons for not accepting the response to a chairman. The chairman shall decide in accordance with the criteria in paragraph (2) whether the response should be accepted.

(4) If the chairman decides that the response should be accepted he shall inform the Secretary in writing and the Secretary shall accept the response and then deal with it in accordance with rule 5(2).

(5) If the chairman decides that the response should not be accepted he shall record his decision together with the reasons for it in writing in a document signed by him. The Secretary shall inform both the claimant and the respondent of that decision and the reasons for it. The Secretary shall also inform the respondent of the consequences for the respondent of that decision and how it may be reviewed or appealed.

(6) Any decision by a chairman not to accept a response may be reviewed in accordance with rules 34 to 36. If the result of such a review is that the response should have been accepted, then the Secretary shall accept the response and proceed to deal with the response as described in rule 5(2).

Counterclaims

7.—(1) When a respondent wishes to present a claim against the claimant (“a counterclaim”) in accordance with article 4 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994⁽²¹⁾, or as the case may be, article 4 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994⁽²²⁾, he must present the details of his counterclaim to the Employment Tribunal Office in writing. Those details must include —

- (a) the respondent’s name;
- (b) the respondent’s address;
- (c) the name of each claimant whom the counterclaim is made against;
- (d) the claimant’s address;
- (e) details of the counterclaim.

(2) A chairman may in relation to particular proceedings by order made under rule 10(1) establish the procedure which shall be followed by the respondent making the counterclaim and any claimant responding to the counterclaim.

(3) The President may by a practice direction made under regulation 13 make provision for the procedure which is to apply to counterclaims generally.

CONSEQUENCES OF A RESPONSE NOT BEING PRESENTED OR ACCEPTED

Default judgments

8.—(1) In any proceedings if the relevant time limit for presenting a response has passed, a chairman may, in the circumstances listed in paragraph (2), issue a default judgment to determine the claim without a hearing if he considers it appropriate to do so.

(2) Those circumstances are when either —

- (a) no response in those proceedings has been presented to the Employment Tribunal Office within the relevant time limit; or
- (b) a response has been so presented, but a decision has been made not to accept the response either by the Secretary under rule 6(1) or by a chairman under rule 6(3), and the Employment Tribunal Office has not received an application under rule 34 to have that decision reviewed;

and the claimant has not informed the Employment Tribunal Office in writing either that he does not wish a default judgment to be issued or that the claim has been settled.

(3) A default judgment may determine liability only or it may determine liability and remedy. If a default judgment determines remedy it shall be such remedy as it appears to the chairman that the claimant is entitled to on the basis of the information before him.

(4) Any default judgment issued by a chairman under this rule shall be recorded in writing and shall be signed by him. The Secretary shall send a copy of that judgment to the parties, to ACAS, and, if the proceedings were referred to the tribunal by a court, to that court. The Secretary shall also inform the parties of their right to have the default judgment reviewed under rule 33. The Secretary shall put a copy of the default judgment on the Register (subject to rule 49 (sexual offences and the Register)).

(5) The claimant or respondent may apply to have the default judgment reviewed in accordance with rule 33.

(21) S.I. 1994/1623.

(22) S.I. 1994/1624.

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(6) If the parties settle the proceedings (either by means of a compromise agreement (as defined in rule 23(2)) or through ACAS) before or on the date on which a default judgment in those proceedings is issued, the default judgment shall have no effect.

(7) When paragraph (6) applies, either party may apply under rule 33 to have the default judgment revoked.

Taking no further part in the proceedings

9. A respondent who has not presented a response to a claim or whose response has not been accepted shall not be entitled to take any part in the proceedings except to —

- (a) make an application under rule 33 (review of default judgments);
- (b) make an application under rule 35 (preliminary consideration of application for review) in respect of rule 34(3)(a) and (b);
- (c) be called as a witness by another person; or
- (d) be sent a copy of a document or corrected entry in accordance with rule 8(4), 29(2) or 37;

and in these rules the word “party” or “respondent” includes a respondent only in relation to his entitlement to take such a part in the proceedings, and in relation to any such part which he takes.

CASE MANAGEMENT

General power to manage proceedings

10.—(1) Subject to the following rules, the chairman may at any time either on the application of a party or on his own initiative make an order in relation to any matter which appears to him to be appropriate. Such orders may be any of those listed in paragraph (2) or such other orders as he thinks fit. Subject to the following rules, orders may be issued as a result of a chairman considering the papers before him in the absence of the parties, or at a hearing (see regulation 2 for the definition of “hearing”).

(2) Examples of orders which may be made under paragraph (1) are orders —

- (a) as to the manner in which the proceedings are to be conducted, including any time limit to be observed;
- (b) that a party provide additional information;
- (c) requiring the attendance of any person in Great Britain either to give evidence or to produce documents or information;
- (d) requiring any person in Great Britain to disclose documents or information to a party to allow a party to inspect such material as might be ordered by a County Court (or in Scotland, by a sheriff);
- (e) extending any time limit, whether or not expired (subject to rules 4(4), 11(2), 25(5), 30(5), 33(1), 35(1), 38(7) and 42(5) of this Schedule, and to rule 3(4) of Schedule 2);
- (f) requiring the provision of written answers to questions put by the tribunal or chairman;
- (g) that, subject to rule 22(8), a short conciliation period be extended into a standard conciliation period;
- (h) staying (in Scotland, sisting) the whole or part of any proceedings;
- (i) that part of the proceedings be dealt with separately;
- (j) that different claims be considered together;

- (k) that any person who the chairman or tribunal considers may be liable for the remedy claimed should be made a respondent in the proceedings;
- (l) dismissing the claim against a respondent who is no longer directly interested in the claim;
- (m) postponing or adjourning any hearing;
- (n) varying or revoking other orders;
- (o) giving notice to the parties of a pre-hearing review or the Hearing;
- (p) giving notice under rule 19;
- (q) giving leave to amend a claim or response;
- (r) that any person who the chairman or tribunal considers has an interest in the outcome of the proceedings may be joined as a party to the proceedings;
- (s) that a witness statement be prepared or exchanged; or
- (t) as to the use of experts or interpreters in the proceedings.

(3) An order may specify the time at or within which and the place at which any act is required to be done. An order may also impose conditions and it shall inform the parties of the potential consequences of non-compliance set out in rule 13.

(4) When a requirement has been imposed under paragraph (1) the person subject to the requirement may make an application under rule 11 (applications in proceedings) for the order to be varied or revoked.

(5) An order described in either paragraph (2)(d) which requires a person other than a party to grant disclosure or inspection of material may be made only when the disclosure sought is necessary in order to dispose fairly of the claim or to save expense.

(6) Any order containing a requirement described in either sub-paragraph (2)(c) or (d) shall state that under section 7(4) of the Employment Tribunals Act, any person who without reasonable excuse fails to comply with the requirement shall be liable on summary conviction to a fine, and the document shall also state the amount of the maximum fine.

(7) An order as described in paragraph (2)(j) may be made only if all relevant parties have been given notice that such an order may be made and they have been given the opportunity to make oral or written representations as to why such an order should or should not be made.

(8) Any order made under this rule shall be recorded in writing and signed by the chairman and the Secretary shall inform all parties to the proceedings of any order made as soon as is reasonably practicable.

Applications in proceedings

11.—(1) At any stage of the proceedings a party may apply for an order to be issued, varied or revoked or for a case management discussion or pre-hearing review to be held.

(2) An application for an order must be made not less than 10 days before the date of the hearing at which it is to be considered (if any) unless it is not reasonably practicable to do so, or the chairman or tribunal considers it in the interests of justice that shorter notice be allowed. The application must (unless a chairman orders otherwise) be in writing to the Employment Tribunal Office and include the case number for the proceedings and the reasons for the request. If the application is for a case management discussion or a pre-hearing review to be held, it must identify any orders sought.

(3) An application for an order must include an explanation of how the order would assist the tribunal or chairman in dealing with the proceedings efficiently and fairly.

(4) When a party is legally represented in relation to the application (except where the application is for a witness order described in rule 10(2)(c) only), that party or his representative must, at the

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same time as the application is sent to the Employment Tribunal Office, provide all other parties with the following information in writing —

- (a) details of the application and the reasons why it is sought;
- (b) notification that any objection to the application must be sent to the Employment Tribunal Office within 7 days of receiving the application, or before the date of the hearing (whichever date is the earlier);
- (c) that any objection to the application must be copied to both the Employment Tribunal Office and all other parties;

and the party or his representative must confirm in writing to the Employment Tribunal Office that this rule has been complied with.

(5) Where a party is not legally represented in relation to the application, the Secretary shall inform all other parties of the matters listed in paragraphs (4)(a) to (c).

(6) A chairman may refuse a party's application and if he does so the Secretary shall inform the parties in writing of such refusal unless the application is refused at a hearing.

Chairman acting on his own initiative

12.—(1) Subject to paragraph (2) and to rules 10(7) and 18(7), a chairman may make an order on his own initiative with or without hearing the parties or giving them an opportunity to make written or oral representations. He may also decide to hold a case management discussion or pre-hearing review on his own initiative.

(2) Where a chairman makes an order without giving the parties the opportunity to make representations —

- (a) the Secretary must send to the party affected by such order a copy of the order and a statement explaining the right to make an application under paragraph (2)(b); and
- (b) a party affected by the order may apply to have it varied or revoked.

(3) An application under paragraph (2)(b) must (subject to rule 10(2)(e)) be made before the time at which, or the expiry of the period within which, the order was to be complied with. Such an application must (unless a chairman orders otherwise) be made in writing to an Employment Tribunal Office and it must include the reasons for the application. Paragraphs (4) and (5) of rule 11 apply in relation to informing the other parties of the application.

Compliance with orders and practice directions

13.—(1) If a party does not comply with an order made under these rules, under rule 8 of Schedule 3, rule 7 of Schedule 4 or a practice direction, a chairman or tribunal —

- (a) may make an order in respect of costs or preparation time under rules 38 to 46; or
- (b) may (subject to paragraph (2) and rule 19) at a pre-hearing review or a Hearing make an order to strike out the whole or part of the claim or, as the case may be, the response and, where appropriate, order that a respondent be debarred from responding to the claim altogether.

(2) An order may also provide that unless the order is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 19 or hold a pre-hearing review or Hearing.

(3) Chairmen and tribunals shall comply with any practice directions issued under regulation 13.

DIFFERENT TYPES OF HEARING

Hearings - general

14.—(1) A chairman or a tribunal (depending on the relevant rule) may hold the following types of hearing —

- (a) a case management discussion under rule 17;
- (b) a pre-hearing review under rule 18;
- (c) a Hearing under rule 26; or
- (d) a review hearing under rule 33 or 36.

(2) So far as it appears appropriate to do so, the chairman or tribunal shall seek to avoid formality in his or its proceedings and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts .

(3) The chairman or tribunal (as the case may be) shall make such enquiries of persons appearing before him or it and of witnesses as he or it considers appropriate and shall otherwise conduct the hearing in such manner as he or it considers most appropriate for the clarification of the issues and generally for the just handling of the proceedings.

(4) Unless the parties agree to shorter notice, the Secretary shall send notice of any hearing (other than a case management discussion) to every party not less than 14 days before the date fixed for the hearing and shall inform them that they have the opportunity to submit written representations and to advance oral argument. The Secretary shall give the parties reasonable notice before a case management discussion is held.

(5) If a party wishes to submit written representations for consideration at a hearing (other than a case management discussion) he shall present them to the Employment Tribunal Office not less than 7 days before the hearing and shall at the same time send a copy to all other parties.

(6) The tribunal or chairman may, if it or he considers it appropriate, consider representations in writing which have been submitted otherwise than in accordance with paragraph (5).

Use of electronic communications

15.—(1) A hearing (other than those mentioned in sub-paragraphs (c) and (d) of rule 14(1)) may be conducted by use of electronic communications provided that the chairman or tribunal conducting the hearing considers it just and equitable to do so.

(2) Where a hearing is required by these rules to be held in public and it is to be conducted by use of electronic communications in accordance with this rule then, subject to rule 16, it must be held in a place to which the public has access and using equipment so that the public is able to hear all parties to the communication.

Hearings which may be held in private

16.—(1) A hearing or part of one may be conducted in private for the purpose of hearing from any person evidence or representations which in the opinion of the tribunal or chairman is likely to consist of information —

- (a) which he could not disclose without contravening a prohibition imposed by or by virtue of any enactment;
- (b) which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence placed in him by another person; or

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- (c) 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 TULR(C)A, cause substantial injury to any undertaking of his or any undertaking in which he works.

(2) Where a tribunal or chairman decides to hold a hearing or part of one in private, it or he shall give reasons for doing so. A member of the Council on Tribunals (in Scotland, a member of the Council on Tribunals or its Scottish Committee) shall be entitled to attend any Hearing or pre-hearing review taking place in private in his capacity as a member.

CASE MANAGEMENT DISCUSSIONS

Conduct of case management discussions

17.—(1) Case management discussions are interim hearings and may deal with matters of procedure and management of the proceedings and they may be held in private. Case management discussions shall be conducted by a chairman.

(2) Any determination of a person's civil rights or obligations shall not be dealt with in a case management discussion. The matters listed in rule 10(2) are examples of matters which may be dealt with at case management discussions. Orders and judgments listed in rule 18(7) may not be made at a case management discussion.

PRE-HEARING REVIEWS

Conduct of pre-hearing reviews

18.—(1) Pre-hearing reviews are interim hearings and shall be conducted by a chairman unless the circumstances in paragraph (3) are applicable. Subject to rule 16, they shall take place in public.

(2) At a pre-hearing review the chairman may carry out a preliminary consideration of the proceedings and he may —

- (a) determine any interim or preliminary matter relating to the proceedings;
- (b) issue any order in accordance with rule 10 or do anything else which may be done at a case management discussion;
- (c) order that a deposit be paid in accordance with rule 20 without hearing evidence;
- (d) consider any oral or written representations or evidence;
- (e) deal with an application for interim relief made under section 161 of TULR(C)A or section 128 of the Employment Rights Act.

(3) Pre-hearing reviews shall be conducted by a tribunal composed in accordance with section 4(1) and (2) of the Employment Tribunals Act if —

- (a) a party has made a request in writing not less than 10 days before the date on which the pre-hearing review is due to take place that the pre-hearing review be conducted by a tribunal instead of a chairman; and
- (b) a chairman considers that one or more substantive issues of fact are likely to be determined at the pre-hearing review, that it would be desirable for the pre-hearing review to be conducted by a tribunal and he has issued an order that the pre-hearing review be conducted by a tribunal.

(4) If an order is made under paragraph (3), any reference to a chairman in relation to a pre-hearing review shall be read as a reference to a tribunal.

(5) Notwithstanding the preliminary or interim nature of a pre-hearing review, at a pre-hearing review the chairman may give judgment on any preliminary issue of substance relating to the

proceedings. Judgments or orders made at a pre-hearing review may result in the proceedings being struck out or dismissed or otherwise determined with the result that a Hearing is no longer necessary in those proceedings.

(6) Before a judgment or order listed in paragraph (7) is made, notice must be given in accordance with rule 19. The judgments or order listed in paragraph (7) must be made at a pre-hearing review or a Hearing if one of the parties has so requested. If no such request has been made such judgments or order may be made in the absence of the parties.

(7) Subject to paragraph (6), a chairman or tribunal may make a judgment or order: —

- (a) as to the entitlement of any party to bring or contest particular proceedings;
- (b) striking out or amending all or part of any claim or response on the grounds that it is scandalous, or vexatious or has no reasonable prospect of success;
- (c) striking out any claim or response (or part of one) on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (d) striking out a claim which has not been actively pursued;
- (e) striking out a claim or response (or part of one) for non-compliance with an order or practice direction;
- (f) striking out a claim where the chairman or tribunal considers that it is no longer possible to have a fair Hearing in those proceedings;
- (g) making a restricted reporting order (subject to rule 50).

(8) A claim or response or any part of one may be struck out under these rules only on the grounds stated in sub-paragraphs (7)(b) to (f).

(9) If at a pre-hearing review a requirement to pay a deposit under rule 20 has been considered, the chairman who conducted that pre-hearing review shall not be a member of the tribunal at the Hearing in relation to those proceedings.

Notice requirements

19.—(1) Before a chairman or a tribunal makes a judgment or order described in rule 18(7), except where the order is one described in rule 13(2) or it is a temporary restricted reporting order made in accordance with rule 50, the Secretary shall send notice to the party against whom it is proposed that the order or judgment should be made. The notice shall inform him of the order or judgment to be considered and give him the opportunity to give reasons why the order or judgment should not be made. This paragraph shall not be taken to require the Secretary to send such notice to that party if that party has been given an opportunity to give reasons orally to the chairman or the tribunal as to why the order should not be made.

(2) Where a notice required by paragraph (1) is sent in relation to an order to strike out a claim which has not been actively pursued, unless the contrary is proved, the notice shall be treated as if it were received by the addressee if it has been sent to the address specified in the claim as the address to which notices are to be sent (or to any subsequent replacement for that address which has been notified to the Employment Tribunal Office).

PAYMENT OF A DEPOSIT

Requirement to pay a deposit in order to continue with proceedings

20.—(1) At a pre-hearing review if a chairman considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have little reasonable prospect of success, the chairman may make an order against that party requiring the party to pay a deposit

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of an amount not exceeding £500 as a condition of being permitted to continue to take part in the proceedings relating to that matter.

(2) No order shall be made under this rule unless the chairman has taken reasonable steps to ascertain the ability of the party against whom it is proposed to make the order to comply with such an order, and has taken account of any information so ascertained in determining the amount of the deposit.

(3) An order made under this rule, and the chairman's grounds for making such an order, shall be recorded in a document signed by the chairman. A copy of that document shall be sent to each of the parties and shall be accompanied by a note explaining that if the party against whom the order is made persists in making those contentions relating to the matter to which the order relates, he may have an award of costs or preparation time made against him and could lose his deposit.

(4) If a party against whom an order has been made does not pay the amount specified in the order to the Secretary either: —

- (a) within the period of 21 days of the day on which the document recording the making of the order is sent to him; or
- (b) within such further period, not exceeding 14 days, as the chairman may allow in the light of representations made by that party within the period of 21 days;

a chairman shall strike out the claim or response of that party or, as the case may be, the part of it to which the order relates.

(5) The deposit paid by a party under an order made under this rule shall be refunded to him in full except where rule 47 applies.

CONCILIATION

Documents to be sent to conciliators

21. In proceedings brought under the provisions of any enactment providing for conciliation, the Secretary shall send copies of all documents, orders, judgments, written reasons and notices to an ACAS conciliation officer except where the Secretary and ACAS have agreed otherwise.

Fixed period for conciliation

22.—(1) This rule and rules 23 and 24 apply to all proceedings before a tribunal which are brought under any enactment which provides for conciliation except national security proceedings and proceedings which include a claim made under one or more of the following enactments —

- (a) the Equal Pay Act, section 2(1);
- (b) the Sex Discrimination Act, Part II, section 63;
- (c) the Race Relations Act, Part II, section 54;
- (d) the Disability Discrimination Act, Part II, section 17A or 25(8)(**23**);
- (e) the Employment Equality (Sexual Orientation) Regulations 2003(**24**);
- (f) the Employment Equality (Religion or Belief) Regulations 2003(**25**); and
- (g) Employment Rights Act, sections 47B, 103A and 105(6A)(**26**).

(23) These sections were inserted into the Disability Discrimination Act 1995 (c. 50) by regulations 3(1), 9 and 19 of the Disability Discrimination Act 1995 (Amendment) Regulations 2003 S.I. 2003/1673.

(24) S.I. 2003/1661.

(25) S.I. 2003/1660.

(26) These sections were inserted into the Employment Rights Act respectively by sections 2, 5 and 6 of the Public Interest Disclosure Act 1998 c. 23.

(2) In all proceedings to which this rule applies there shall be a conciliation period to give a time limited opportunity for the parties to reach an ACAS conciliated settlement (the “conciliation period”). In proceedings in which there is more than one respondent there shall be a conciliation period in relation to each respondent.

(3) In any proceedings to which this rule applies a Hearing shall not take place during a conciliation period and where the time and place of a Hearing has been fixed to take place during a conciliation period, such Hearing shall be postponed until after the end of any conciliation period. The fixing of the time and place for the Hearing may take place during a conciliation period. Pre-hearing reviews and case management discussions may take place during a conciliation period.

(4) In relation to each respondent the conciliation period commences on the date on which the Secretary sends a copy of the claim to that respondent. The duration of the conciliation period shall be determined in accordance with the following paragraphs and rule 23.

(5) In any proceedings which consist of claims under any of the following enactments (but no other enactments) the conciliation period is seven weeks (the “short conciliation period”) —

- (a) Employment Tribunals Act, section 3 (breach of contract);
- (b) the following provisions of the Employment Rights Act —
 - (i) sections 13 to 27 (failure to pay wages or an unauthorised deduction of wages);
 - (ii) section 28 (right to a guarantee payment);
 - (iii) section 50 (right to time off for public duties);
 - (iv) section 52 (right to time off to look for work or arrange training);
 - (v) section 53 (right to remuneration for time off under section 52);
 - (vi) section 55 (right to time off for ante-natal care);
 - (vii) section 56 (right to remuneration for time off under section 55);
 - (viii) section 64 (failure to pay remuneration whilst suspended for medical reasons);
 - (ix) section 68 (right to remuneration whilst suspended on maternity grounds);
 - (x) sections 163 or 164 (failure to pay a redundancy payment);
- (c) the following provisions of TULR(C)A —
 - (i) section 68 (right not to suffer deduction of unauthorised subscriptions)
 - (ii) section 168 (time off for carrying out trade union duties);
 - (iii) section 169 (payment for time off under section 168);
 - (iv) section 170 (time off for trade union activities);
 - (v) section 192 (failure to pay remuneration under a protective award);
- (d) regulation 11(5) of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (failure to pay compensation following failure to inform or consult).

(6) In all other proceedings to which this rule applies the conciliation period is thirteen weeks (the “standard conciliation period”).

(7) In proceedings to which the standard conciliation period applies, that period shall be extended by a period of a further two weeks if ACAS notifies the Secretary in writing that all of the following circumstances apply before the expiry of the standard conciliation period —

- (a) all parties to the proceedings agree to the extension of any relevant conciliation period;
- (b) a proposal for settling the proceedings has been made by a party and is under consideration by the other parties to the proceedings; and
- (c) ACAS considers it probable that the proceedings will be settled during the further extended conciliation period.

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(8) A short conciliation period in any proceedings may, if that period has not already ended, be extended into a standard conciliation period if a chairman considers on the basis of the complexity of the proceedings that a standard conciliation period would be more appropriate. Where a chairman makes an order extending the conciliation period in such circumstances, the Secretary shall inform the parties to the proceedings and ACAS in writing as soon as is reasonably practicable.

Early termination of conciliation period

23.—(1) Should one of the following circumstances arise during a conciliation period (be it short or standard) which relates to a particular respondent (referred to in this rule as the relevant respondent), that conciliation period shall terminate early on the relevant date specified (and if more than one circumstance or date listed below is applicable to any conciliation period, that conciliation period shall terminate on the earliest of those dates) —

- (a) where a default judgment is issued against the relevant respondent which determines both liability and remedy, the date on which the default judgment is signed;
- (b) where a default judgment is issued against the relevant respondent which determines liability only, the date which is 14 days after the date on which the default judgment is signed;
- (c) where either the claim or the response entered by the relevant respondent is struck out, the date on which the judgment to strike out is signed;
- (d) where the claim is withdrawn, the date of receipt by the Employment Tribunal Office of the notice of withdrawal;
- (e) where the claimant or the relevant respondent has informed ACAS in writing that they do not wish to proceed with attempting to conciliate in relation to those proceedings, the date on which ACAS sends notice of such circumstances to the parties and to the Employment Tribunal Office;
- (f) where the claimant and the relevant respondent have reached a settlement by way of a compromise agreement (including a compromise agreement to refer proceedings to arbitration), the date on which the Employment Tribunal Office receives notice from both of those parties to that effect;
- (g) where the claimant and the relevant respondent have reached a settlement through a conciliation officer (including a settlement to refer the proceedings to arbitration), the date of the settlement;
- (h) where no response presented by the relevant respondent has been accepted in the proceedings and no default judgment has been issued against that respondent, the date which is 14 days after the expiry of the time limit for presenting the response to the Secretary.

(2) Where a chairman or tribunal makes an order which re-establishes the relevant respondent's right to respond to the claim (for example, revoking a default judgment) and when that order is made, the conciliation period in relation to that respondent has terminated early under paragraph (1) or has otherwise expired, the chairman or tribunal may order that a further conciliation period shall apply in relation to that respondent if they consider it appropriate to do so.

(3) When an order is made under paragraph (2), the further conciliation period commences on the date of that order and the duration of that period shall be determined in accordance with paragraphs (5) to (8) of rule 22 and paragraph (1) of this rule as if the earlier conciliation period in relation to that respondent had not taken place.

Effect of staying or sisting proceedings on the conciliation period

24. Where during a conciliation period an order is made to stay (or in Scotland, sist) the proceedings, that order has the effect of suspending any conciliation period in those proceedings. Any unexpired portion of a conciliation period takes effect from the date on which the stay comes to an end (or in Scotland, the sist is recalled) and continues for the duration of the unexpired portion of that conciliation period or two weeks (whichever is the greater).

WITHDRAWAL OF PROCEEDINGS

Right to withdraw proceedings

25.—(1) A claimant may withdraw all or part of his claim at any time – this may be done either orally at a hearing or in writing in accordance with paragraph (2).

(2) To withdraw a claim or part of one in writing the claimant must inform the Employment Tribunal Office of the claim or the parts of it which are to be withdrawn. Where there is more than one respondent the notification must specify against which respondents the claim is being withdrawn.

(3) The Secretary shall inform all other parties of the withdrawal. Withdrawal takes effect on the date on which the Employment Tribunal Office (in the case of written notifications) or the tribunal (in the case of oral notification) receives notice of it and where the whole claim is withdrawn, subject to paragraph (4), proceedings are brought to an end against the relevant respondent on that date. Withdrawal does not affect proceedings as to costs, preparation time or wasted costs.

(4) Where a claim has been withdrawn, a respondent may make an application to have the proceedings against him dismissed. Such an application must be made by the respondent in writing to the Employment Tribunal Office within 28 days of the notice of the withdrawal being sent to the respondent. If the respondent's application is granted and the proceedings are dismissed those proceedings cannot be continued by the claimant (unless the decision to dismiss is successfully reviewed or appealed).

(5) The time limit in paragraph (4) may be extended by a chairman if he considers it just and equitable to do so.

THE HEARING

Hearings

26.—(1) A Hearing is held for the purpose of determining outstanding procedural or substantive issues or disposing of the proceedings. In any proceedings there may be more than one Hearing and there may be different categories of Hearing, such as a Hearing on liability, remedies, costs (in Scotland, expenses) or preparation time.

(2) Any Hearing of a claim shall be heard by a tribunal composed in accordance with section 4(1) and (2) of the Employment Tribunals Act.

(3) Any Hearing of a claim shall take place in public, subject to rule 16.

What happens at the Hearing

27.—(1) The President, Vice President or a Regional Chairman shall fix the date, time and place of the Hearing and the Secretary shall send to each party a notice of the Hearing together with information and guidance as to procedure at the Hearing.

(2) Subject to rule 14(3), at the Hearing a party shall be entitled to give evidence, to call witnesses, to question witnesses and to address the tribunal.

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(3) The tribunal shall require parties and witnesses who attend the Hearing to give their evidence on oath or affirmation.

(4) The tribunal may exclude from the Hearing any person who is to appear as a witness in the proceedings until such time as they give evidence if it considers it in the interests of justice to do so.

(5) If a party fails to attend or to be represented (for the purpose of conducting the party's case at the Hearing) at the time and place fixed for the Hearing, the tribunal may dismiss or dispose of the proceedings in the absence of that party or may adjourn the Hearing to a later date.

(6) If the tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (5), it shall first consider any information in its possession which has been made available to it by the parties.

(7) At a Hearing a tribunal may exercise any powers which may be exercised by a chairman under these rules.

ORDERS, JUDGMENTS AND REASONS

Orders and judgments

28.—(1) Chairmen or tribunals may issue the following —

- (a) a “judgment”, which is a final determination of the proceedings or of a particular issue in those proceedings; it may include an award of compensation, a declaration or recommendation and it may also include orders for costs, preparation time or wasted costs;
- (b) an “order”, which may be issued in relation to interim matters and it will require a person to do or not to do something.

(2) If the parties agree in writing upon the terms of any order or judgment a chairman or tribunal may, if he or it thinks fit, make such order or judgment.

(3) At the end of a hearing the chairman (or, as the case may be, the tribunal) shall either issue any order or judgment orally or shall reserve the judgment or order to be given in writing at a later date.

(4) Where a tribunal is composed of three persons any order or judgment may be made or issued by a majority; and if a tribunal is composed of two persons only, the chairman has a second or casting vote.

Form and content of judgments

29.—(1) When judgment is reserved a written judgment shall be sent to the parties as soon as practicable. All judgments (whether issued orally or in writing) shall be recorded in writing and signed by the chairman.

(2) The Secretary shall provide a copy of the judgment to each of the parties and, where the proceedings were referred to the tribunal by a court, to that court. The Secretary shall include guidance to the parties on how the judgment may be reviewed or appealed.

(3) Where the judgment includes an award of compensation or a determination that one party is required to pay a sum to another (excluding an order for costs, expenses, allowances, preparation time or wasted costs), the document shall also contain a statement of the amount of compensation awarded, or of the sum required to be paid.

Reasons

30.—(1) A tribunal or chairman must give reasons (either oral or written) for any —

- (a) judgment; or

- (b) order, if a request for reasons is made before or at the hearing at which the order is made.
- (2) Reasons may be given orally at the time of issuing the judgment or order or they may be reserved to be given in writing at a later date. If reasons are reserved, they shall be signed by the chairman and sent to the parties by the Secretary.
- (3) Written reasons shall only be provided:—
 - (a) in relation to judgments if requested by one of the parties within the time limit set out in paragraph (5); or
 - (b) in relation to any judgment or order if requested by the Employment Appeal Tribunal at any time.
- (4) When written reasons are provided, the Secretary shall send a copy of the reasons to all parties to the proceedings and record the date on which the reasons were sent. Written reasons shall be signed by the chairman.
- (5) A request for written reasons for a judgment must be made by a party either orally at the hearing (if the judgment is issued at a hearing), or in writing within 14 days of the date on which the judgment was sent to the parties. This time limit may be extended by a chairman where he considers it just and equitable to do so.
- (6) Written reasons for a judgment shall include the following information —
 - (a) the issues which the tribunal or chairman has identified as being relevant to the claim;
 - (b) if some identified issues were not determined, what those issues were and why they were not determined;
 - (c) findings of fact relevant to the issues which have been determined;
 - (d) a concise statement of the applicable law;
 - (e) how the relevant findings of fact and applicable law have been applied in order to determine the issues; and
 - (f) where the judgment includes an award of compensation or a determination that one party make a payment to the other, a table showing how the amount or sum has been calculated or a description of the manner in which it has been calculated.

Absence of chairman

31. Where it is not possible for a judgment, order or reasons to be signed by the chairman due to death, incapacity or absence —

- (a) if the chairman has dealt with the proceedings alone the document shall be signed by the Regional Chairman, Vice President or President when it is practicable for him to do so; and
- (b) if the proceedings have been dealt with by a tribunal composed of two or three persons, the document shall be signed by the other person or persons;

and any person who signs the document shall certify that the chairman is unable to sign.

The Register

32.—(1) Subject to rule 49, the Secretary shall enter a copy of the following documents in the Register —

- (a) any judgment (including any costs, expenses, preparation time or wasted costs order); and
- (b) any written reasons provided in accordance with rule 30 in relation to any judgment.

(2) Written reasons for judgments shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal or chairman so orders. In such a case the Secretary shall send the reasons to each of the parties and where there are proceedings before a superior court

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relating to the judgment in question, he shall send the reasons to that court, together with a copy of the entry in the Register of the judgment to which the reasons relate.

POWER TO REVIEW JUDGMENTS AND DECISIONS

Review of default judgments

33.—(1) A party may apply to have a default judgment against or in favour of him reviewed. An application must be made in writing and presented to the Employment Tribunal Office within 14 days of the date on which the default judgment was sent to the parties. The 14 day time limit may be extended by a chairman if he considers that it is just and equitable to do so.

(2) The application must state the reasons why the default judgment should be varied or revoked. When it is the respondent applying to have the default judgment reviewed, the application must include with it the respondent's proposed response to the claim, an application for an extension of the time limit for presenting the response and an explanation of why rules 4(1) and (4) were not complied with.

(3) A review of a default judgment shall be conducted by a chairman in public. Notice of the hearing and a copy of the application shall be sent by the Secretary to all other parties.

(4) The chairman may —

- (a) refuse the application for a review;
- (b) vary the default judgment;
- (c) revoke all or part of the default judgment;
- (d) confirm the default judgment;

and all parties to the proceedings shall be informed by the Secretary in writing of the chairman's judgment on the application.

(5) A default judgment must be revoked if the whole of the claim was satisfied before the judgment was issued or if rule 8(6) applies. A chairman may revoke or vary all or part of a default judgment if the respondent has a reasonable prospect of successfully responding to the claim or part of it.

(6) In considering the application for a review of a default judgment the chairman must have regard to whether there was good reason for the response not having been presented within the applicable time limit.

(7) If the chairman decides that the default judgment should be varied or revoked and that the respondent should be allowed to respond to the claim the Secretary shall accept the response and proceed in accordance with rule 5(2).

Review of other judgments and decisions

34.—(1) Parties may apply to have certain judgments and decisions made by a tribunal or a chairman reviewed under rules 34 to 36. Those judgments and decisions are —

- (a) a decision not to accept a claim, response or counterclaim;
- (b) a judgment (other than a default judgment but including an order for costs, expenses, preparation time or wasted costs); and
- (c) a decision made under rule 6(3) of Schedule 4;

and references to “decision” in rules 34 to 37 are references to the above judgments and decisions only. Other decisions or orders may not be reviewed under these rules.

(2) In relation to a decision not to accept a claim or response, only the party against whom the decision is made may apply to have the decision reviewed.

(3) Subject to paragraph (4), decisions may be reviewed on the following grounds only —

- (a) the decision was wrongly made as a result of an administrative error;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (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 at that time; or
- (e) the interests of justice require such a review.

(4) A decision not to accept a claim or response may only be reviewed on the grounds listed in paragraphs (3)(a) and (e).

(5) A tribunal or chairman may on its or his own initiative review a decision made by it or him on the grounds listed in paragraphs (3) or (4).

Preliminary consideration of application for review

35.—(1) An application under rule 34 to have a decision reviewed must be made to the Employment Tribunal Office within 14 days of the date on which the decision was sent to the parties. The 14 day time limit may be extended by a chairman if he considers that it is just and equitable to do so.

(2) The application must be in writing and must identify the grounds of the application in accordance with rule 34(3), but if the decision to be reviewed was made at a hearing, an application may be made orally at that hearing.

(3) The application to have a decision reviewed shall be considered (without the need to hold a hearing) by the chairman of the tribunal which made the decision or, if that is not practicable, by —

- (a) a Regional Chairman or the Vice President;
- (b) any chairman nominated by a Regional Chairman or the Vice President; or
- (c) the President;

and that person shall refuse the application if he considers that there are no grounds for the decision to be reviewed under rule 34(3) or there is no reasonable prospect of the decision being varied or revoked.

(4) If an application for a review is refused after such preliminary consideration the Secretary shall inform the party making the application in writing of the chairman's decision and his reasons for it. If the application for a review is not refused the decision shall be reviewed under rule 36.

The review

36.—(1) When a party has applied for a review and the application has not been refused after the preliminary consideration above, the decision shall be reviewed by the chairman or tribunal who made the original decision. If that is not practicable a different chairman or tribunal (as the case may be) shall be appointed by a Regional Chairman, the Vice President or the President.

(2) Where no application has been made by a party and the decision is being reviewed on the initiative of the tribunal or chairman, the review must be carried out by the same tribunal or chairman who made the original decision and —

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- (a) a notice must be sent to each of the parties explaining in summary the grounds upon which it is proposed to review the decision and giving them an opportunity to give reasons why there should be no review; and
 - (b) such notice must be sent before the expiry of 14 days from the date on which the original decision was sent to the parties.
- (3) A tribunal or chairman who reviews a decision under paragraph (1) or (2) may confirm, vary or revoke the decision. If the decision is revoked, the tribunal or chairman must order the decision to be taken again. When an order is made that the original decision be taken again, if the original decision was taken by a chairman without a hearing, the new decision may be taken without hearing the parties and if the original decision was taken at a hearing, a new hearing must be held.

Correction of judgments, decisions or reasons

37.—(1) Clerical mistakes in any order, judgment, decision or reasons, or errors arising in those documents from an accidental slip or omission, may at any time be corrected by certificate by the chairman, Regional Chairman, Vice President or President.

(2) If a document is corrected by certificate under paragraph (1), or if a decision is revoked or varied under rules 33 or 36 or altered in any way by order of a superior court, the Secretary shall alter any entry in the Register which is so affected to conform with the certificate or order and send a copy of any entry so altered to each of the parties and, if the proceedings have been referred to the tribunal by a court, to that court.

(3) Where a document omitted from the Register under rules 32 or 49 is corrected by certificate under this rule, the Secretary shall send a copy of the corrected document to the parties; and where there are proceedings before any superior court relating to the decision or reasons in question, he shall send a copy to that court together with a copy of the entry in the Register of the decision, if it has been altered under this rule.

(4) In Scotland, the references in paragraphs (2) and (3) to superior courts shall be read as referring to appellate courts.

COSTS ORDERS AND ORDERS FOR EXPENSES

General power to make costs and expenses orders

38.—(1) Subject to paragraph (2) and in the circumstances listed in rules 39, 40 and 47 a tribunal or chairman may make an order (“a costs order”) that —

- (a) a party (“the paying party”) make a payment in respect of the costs incurred by another party (“the receiving party”);
- (b) the paying party pay to the Secretary of State, in whole or in part, any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under section 5(2) or (3) of the Employment Tribunals Act to any person for the purposes of, or in connection with, that person’s attendance at the tribunal.

(2) A costs order may be made under rules 39, 40 and 47 only where the receiving party has been legally represented at the Hearing or, in proceedings which are determined without a Hearing, if the receiving party is legally represented when the proceedings are determined. If the receiving party has not been so legally represented a tribunal may make a preparation time order (subject to rules 42 to 45). (See rule 46 on the restriction on making a costs order and a preparation time order in the same proceedings.)

(3) For the purposes of these rules “costs” shall mean fees, charges, disbursements or expenses incurred by or on behalf of a party, in relation to the proceedings. In Scotland all references to costs

(except when used in the expression “wasted costs”) or costs orders shall be read as references to expenses or orders for expenses.

(4) A costs order may be made against or in favour of a respondent who has not had a response accepted in the proceedings in relation to the conduct of any part which he has taken in the proceedings.

(5) In these rules legally represented means having the assistance of a person (including where that person is the receiving party’s employee) who —

- (a) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990⁽²⁷⁾;
- (b) is an advocate or solicitor in Scotland; or
- (c) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.

(6) Any costs order made under rules 39, 40 or 47 shall be payable by the paying party and not his representative.

(7) A party may apply for a costs order to be made at any time during the proceedings. An application may be made at the end of a hearing, or in writing to the Employment Tribunal Office. An application for costs which is received by the Employment Tribunal Office later than 28 days from the issuing of the judgment determining the claim shall not be accepted or considered by a tribunal or chairman unless it or he considers that it is in the interests of justice to do so.

(8) In paragraph (7), the date of issuing of the judgment determining the claim shall be either —

- (a) the date of the Hearing if the judgment was issued orally; or
- (b) if the judgment was reserved, the date on which the written judgment was sent to the parties.

(9) No costs order shall be made unless the Secretary has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send notice to that party if the party has been given an opportunity to give reasons orally to the chairman or tribunal as to why the order should not be made.

(10) Where a tribunal or chairman makes a costs order it or he shall provide written reasons for doing so if a request for written reasons is made within 14 days of the date of the costs order. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

When a costs or expenses order must be made

39.—(1) Subject to rule 38(2), a tribunal must make a costs order against a respondent where in proceedings for unfair dismissal a Hearing has been postponed or adjourned and —

- (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the Hearing; and
- (b) the postponement or adjournment of that 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 claimant was dismissed, or of comparable or suitable employment.

(2) A costs order made under paragraph (1) shall relate to any costs incurred as a result of the postponement or adjournment of the Hearing.

(27) 1990 c. 41.

When a costs or expenses order may be made

40.—(1) A tribunal or chairman may make a costs order when on the application of a party it has postponed the day or time fixed for or adjourned a Hearing or pre-hearing review. The costs order may be against or, as the case may require, in favour of that party as respects any costs incurred or any allowances paid as a result of the postponement or adjournment.

(2) A tribunal or chairman shall consider making a costs order against a paying party where, in the opinion of the tribunal or chairman (as the case may be), any of the circumstances in paragraph (3) apply. Having so considered, the tribunal or chairman may make a costs order against the paying party if it or he considers it appropriate to do so.

(3) The circumstances referred to in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying party has been misconceived.

(4) A tribunal or chairman may make a costs order against a party who has not complied with an order or practice direction.

The amount of a costs or expenses order

41.—(1) The amount of a costs order against the paying party shall be determined in any of the following ways —

- (a) the tribunal may specify the sum which the paying party must pay to the receiving party, provided that sum does not exceed £10,000;
- (b) the parties may agree on a sum to be paid by the paying party to the receiving party and if they do so the costs order shall be for the sum so agreed;
- (c) the tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party with the amount to be paid being determined by way of detailed assessment in a County Court in accordance with the Civil Procedure Rules 1998⁽²⁸⁾ or, in Scotland, as taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order.

(2) The tribunal or chairman may have regard to the paying party's ability to pay when considering whether it or he shall make a costs order or how much that order should be.

(3) For the avoidance of doubt, the amount of a costs order made under paragraphs (1)(b) or (c) may exceed £10,000.

PREPARATION TIME ORDERS

General power to make preparation time orders

42.—(1) Subject to paragraph (2) and in the circumstances described in rules 43, 44 and 47 a tribunal or chairman may make an order ("a preparation time order") that a party ("the paying party") make a payment in respect of the preparation time of another party ("the receiving party").

(2) A preparation time order may be made under rules 43, 44 or 47 only where the receiving party has not been legally represented at a Hearing or, in proceedings which are determined without a Hearing, if the receiving party has not been legally represented when the proceedings are determined. (See: rules 38 to 41 on when a costs order may be made; rule 38(5) for the definition of legally represented; and rule 46 on the restriction on making a costs order and a preparation time order in the same proceedings).

(28) S.I. 1998/3132.

- (3) For the purposes of these rules preparation time shall mean time spent by —
- (a) the receiving party or his employees carrying out preparatory work directly relating to the proceedings; and
 - (b) the receiving party's legal or other advisers relating to the conduct of the proceedings;
- up to but not including time spent at any Hearing.
- (4) A preparation time order may be made against a respondent who has not had a response accepted in the proceedings in relation to the conduct of any part which he has taken in the proceedings.
- (5) A party may apply to the tribunal for a preparation time order to be made at any time during the proceedings. An application may be made at the end of a hearing or in writing to the Secretary. An application for preparation time which is received by the Employment Tribunal Office later than 28 days from the issuing of the judgment determining the claim shall not be accepted or considered by a tribunal or chairman unless they consider that it is in the interests of justice to do so.
- (6) In paragraph (5) the date of issuing of the judgment determining the claim shall be either —
- (a) the date of the Hearing if the judgment was issued orally; or,
 - (b) if the judgment was reserved, the date on which the written judgment was sent to the parties.
- (7) No preparation time order shall be made unless the Secretary has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send notice to that party if the party has been given an opportunity to give reasons orally to the chairman or tribunal as to why the order should not be made.
- (8) Where a tribunal or chairman makes a preparation time order it or he shall provide written reasons for doing so if a request for written reasons is made within 14 days of the date of the preparation time order. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

When a preparation time order must be made

- 43.**—(1) Subject to rule 42(2), a tribunal must make a preparation time order against a respondent where in proceedings for unfair dismissal a Hearing has been postponed or adjourned and —
- (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the Hearing; and
 - (b) the postponement or adjournment of that 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 claimant was dismissed, or of comparable or suitable employment.
- (2) A preparation time order made under paragraph (1) shall relate to any preparation time spent as a result of the postponement or adjournment of the Hearing.

When a preparation time order may be made

- 44.**—(1) A tribunal or chairman may make a preparation time order when on the application of a party it has postponed the day or time fixed for or adjourned a Hearing or a pre-hearing review. The preparation time order may be against or, as the case may require, in favour of that party as respects any preparation time spent as a result of the postponement or adjournment.
- (2) A tribunal or chairman shall consider making a preparation time order against a party (the paying party) where, in the opinion of the tribunal or the chairman (as the case may be), any of the

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circumstances in paragraph (3) apply. Having so considered the tribunal or chairman may make a preparation time order against that party if it considers it appropriate to do so.

(3) The circumstances described in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying party has been misconceived.

(4) A tribunal or chairman may make a preparation time order against a party who has not complied with an order or practice direction.

Calculation of a preparation time order

45.—(1) In order to calculate the amount of preparation time the tribunal or chairman shall make an assessment of the number of hours spent on preparation time on the basis of —

- (a) information on time spent provided by the receiving party; and
- (b) the tribunal or chairman's own assessment of what it or he considers to be a reasonable and proportionate amount of time to spend on such preparatory work and with reference to, for example, matters such as the complexity of the proceedings, the number of witnesses and documentation required.

(2) Once the tribunal or chairman has assessed the number of hours spent on preparation time in accordance with paragraph (1), it or he shall calculate the amount of the award to be paid to the receiving party by applying an hourly rate of £25.00 to that figure (or such other figure calculated in accordance with paragraph (4)). No preparation time order made under these rules may exceed the sum of £10,000.

(3) The tribunal or chairman may have regard to the paying party's ability to pay when considering whether it or he shall make a preparation time order or how much that order should be.

(4) For the year commencing on 6th April 2006, the hourly rate of £25 shall be increased by the sum of £1.00 and for each subsequent year commencing on 6 April, the hourly rate for the previous year shall also be increased by the sum of £1.00.

Restriction on making costs or expenses orders and preparation time orders

46.—(1) A tribunal or chairman may not make a preparation time order and a costs order in favour of the same party in the same proceedings. However where a preparation time order is made in favour of a party in proceedings, the tribunal or chairman may make a costs order in favour of another party or in favour of the Secretary of State under rule 38(1)(b) in the same proceedings.

(2) If a tribunal or a chairman wishes to make either a costs order or a preparation time order in proceedings, before the claim has been determined, it or he may make an order that either costs or preparation time be awarded to the receiving party. In such circumstances a tribunal or chairman may decide whether the award should be for costs or preparation time after the proceedings have been determined.

Costs, expenses or preparation time orders when a deposit has been taken

47.—(1) When: —

- (a) a party has been ordered under rule 20 to pay a deposit as a condition of being permitted to continue to participate in proceedings relating to a matter;
- (b) in respect of that matter, the tribunal or chairman has found against that party in its or his judgment; and
- (c) no award of costs or preparation time has been made against that party arising out of the proceedings on the matter;

the tribunal or chairman shall consider whether to make a costs or preparation time order against that party on the ground that he conducted the proceedings relating to the matter unreasonably in persisting in having the matter determined; but the tribunal or chairman shall not make a costs or preparation time order on that ground unless it has considered the document recording the order under rule 20 and is of the opinion that the grounds which caused the tribunal or chairman to find against the party in its judgment were substantially the same as the grounds recorded in that document for considering that the contentions of the party had little reasonable prospect of success.

(2) When a costs or preparation time order is made against a party who has had an order under rule 20 made against him (whether the award arises out of the proceedings relating to the matter in respect of which the order was made or out of proceedings relating to any other matter considered with that matter), his deposit shall be paid in part or full settlement of the costs or preparation time order —

- (a) when an order is made in favour of one party, to that party; and
- (b) when orders are made in favour of more than one party, to all of them or any one or more of them as the tribunal or chairman thinks fit, and if to all or more than one, in such proportions as the tribunal or chairman considers appropriate;

and if the amount of the deposit exceeds the amount of the costs or preparation time order, the balance shall be refunded to the party who paid it.

WASTED COSTS ORDERS AGAINST REPRESENTATIVES

Personal liability of representatives for costs

48.—(1) A tribunal or chairman may make a wasted costs order against a party's representative.

(2) In a wasted costs order the tribunal or chairman may:—

- (a) disallow, or order the representative of a party to meet the whole or part of any wasted costs of any party, including an order that the representative repay to his client any costs which have already been paid; and
- (b) order the representative to pay to the Secretary of State, in whole or in part, any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under section 5(2) or (3) of the Employment Tribunals Act to any person for the purposes of, or in connection with, that person's attendance at the tribunal by reason of the representative's conduct of the proceedings.

(3) "Wasted costs" means any costs incurred by a party: —

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the tribunal considers it unreasonable to expect that party to pay.

(4) In this rule "representative" means a party's legal or other representative or any employee of such representative, but it does not include a representative who is not acting in pursuit of profit with regard to those proceedings. A person is considered to be acting in pursuit of profit if he is acting on a conditional fee arrangement.

(5) A wasted costs order may be made in favour of a party whether or not that party is legally represented and such an order may also be made in favour of a representative's own client. A wasted costs order may not be made against a representative where that representative is an employee of a party.

(6) Before making a wasted costs order, the tribunal or chairman shall give the representative a reasonable opportunity to make oral or written representations as to reasons why such an order

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should not be made. The tribunal or chairman shall also have regard to the representative's ability to pay when considering whether it shall make a wasted costs order or how much that order should be.

(7) When a tribunal or chairman makes a wasted costs order, it must specify in the order the amount to be disallowed or paid.

(8) The Secretary shall inform the representative's client in writing: —

- (a) of any proceedings under this rule; or
- (b) of any order made under this rule against the party's representative.

(9) Where a tribunal or chairman makes a wasted costs order it or he shall provide written reasons for doing so if a request is made for written reasons within 14 days of the date of the wasted costs order. This 14 day time limit may not be extended under rule 10. The Secretary shall send a copy of the written reasons to all parties to the proceedings.

POWERS IN RELATION TO SPECIFIC TYPES OF PROCEEDINGS

Sexual offences and the Register

49. In any proceedings appearing to involve allegations of the commission of a sexual offence the tribunal, the chairman or the Secretary shall omit from the Register, or delete from the Register or any judgment, document or record of the proceedings, which is available to the public, any identifying matter which is likely to lead members of the public to identify any person affected by or making such an allegation.

Restricted reporting orders

50.—(1) A restricted reporting order may be made in the following types of proceedings: —

- (a) any case which involves allegations of sexual misconduct;
- (b) a complaint under section 17A or 25(8) of the Disability Discrimination Act in which evidence of a personal nature is likely to be heard by the tribunal or a chairman.

(2) A party (or where a complaint is made under the Disability Discrimination Act, the complainant) may apply for a restricted reporting order (either temporary or full) in writing to the Employment Tribunal Office, or orally at a hearing, or the tribunal or chairman may make the order on its or his own initiative without any application having been made.

(3) A chairman or tribunal may make a temporary restricted reporting order without holding a hearing or sending a copy of the application to other parties.

(4) Where a temporary restricted reporting order has been made the Secretary shall inform all parties to the proceedings in writing as soon as possible of —

- (a) the fact that the order has been made; and
- (b) their right to apply to have the temporary restricted reporting order revoked or converted into a full restricted reporting order within 14 days of the temporary order having been made.

(5) If no application under paragraph (4)(b) is made within the 14 days, the temporary restricted reporting order shall lapse and cease to have any effect on the fifteenth day after the order was made. If such an application is made the temporary restricted reporting order shall continue to have effect until the pre-hearing review or Hearing at which the application is considered.

(6) All parties must be given an opportunity to advance oral argument at a pre-hearing review or a Hearing before a tribunal or chairman decides whether or not to make a full restricted reporting order (whether or not there was previously a temporary restricted reporting order in the proceedings).

(7) Any person may make an application to the chairman or tribunal to have a right to make representations before a full restricted reporting order is made. The chairman or tribunal shall allow such representations to be made where he or it considers that the applicant has a legitimate interest in whether or not the order is made.

(8) Where a tribunal or chairman makes a restricted reporting order —

- (a) it shall specify in the order the persons who may not be identified;
- (b) a full order shall remain in force until both liability and remedy have been determined in the proceedings unless it is revoked earlier; and
- (c) the Secretary shall ensure that a notice of the fact that a restricted reporting order has been made in relation to those proceedings is displayed on the notice board of the employment tribunal with any list of the proceedings taking place before the employment tribunal, and on the door of the room in which the proceedings affected by the order are taking place.

(9) Where a restricted reporting order has been made under this rule and that complaint is being dealt with together with any other proceedings, the tribunal or chairman may order that the restricted reporting order applies also in relation to those other proceedings or a part of them.

(10) A tribunal or chairman may revoke a restricted reporting order at any time.

(11) For the purposes of this rule liability and remedy are determined in the proceedings on the date recorded as being the date on which the judgment disposing of the claim was sent to the parties, and references to a restricted reporting order include references to both a temporary and a full restricted reporting order.

Proceedings involving the National Insurance Fund

51. The Secretary of State shall be entitled to appear as if she were a party and be heard at any hearing in relation to proceedings which may involve a payment out of the National Insurance Fund, and in that event she shall be treated for the purposes of these rules as if she were a party.

Collective agreements

52. Where a claim includes a complaint under section 6(4A) of the Sex Discrimination Act 1986⁽²⁹⁾ relating to a term of a collective agreement, the following persons, whether or not identified in the claim, shall be regarded as the persons against whom a remedy is claimed and shall be treated as respondents for the purposes of these rules, that is to say —

- (a) the claimant's employer (or prospective employer); and
- (b) every organisation of employers and organisation of workers, and every association of or representative of such organisations, which, if the terms were to be varied voluntarily, would be likely, in the opinion of a chairman, to negotiate the variation;

provided that such an organisation or association shall not be treated as a respondent if the chairman, having made such enquiries of the claimant and such other enquiries as he thinks fit, is of the opinion that it is not reasonably practicable to identify the organisation or association.

Employment Agencies Act 1973

53. In relation to any claim in respect of an application under section 3C of the Employment Agencies Act 1973⁽³⁰⁾ for the variation or revocation of a prohibition order, the Secretary of State shall be treated as the respondent in such proceedings for the purposes of these rules. In relation to

⁽²⁹⁾ 1986 c. 59.

⁽³⁰⁾ 1973 c. 35; section 3C was inserted by paragraphs 1(1) and (3) of Schedule 10 to the Deregulation and Contracting Out Act 1994 c. 40.

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such an application the claim does not need to include the name and address of the persons against whom the claim is being made.

National security proceedings

54.—(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 a tribunal or chairman by notice to the Secretary to:—

- (a) conduct proceedings in private for all or part of particular Crown employment proceedings;
- (b) exclude the claimant from all or part of particular Crown employment proceedings;
- (c) exclude the claimant's representative 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) A tribunal or chairman may, if it or he considers it expedient in the interests of national security, by order —

- (a) do anything which can be required by direction to be done under paragraph (1);
- (b) order any person to whom any document (including any judgment 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 Secretary in accordance with paragraph (3) that he wishes to address the tribunal or chairman with a view to an order being made 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 tribunal or chairman decides whether or not to make such an order;
- (c) take steps to keep secret all or part of the reasons for its judgment.

The tribunal or chairman (as the case may be) shall keep under review any order it or he has made under this paragraph.

(3) In any proceedings in which a Minister of the Crown considers that it would be appropriate for a tribunal or chairman 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 tribunal or chairman thereon. The Minister shall inform the Secretary by notice that he wishes to address the tribunal or chairman and the Secretary shall copy the notice to the parties.

(4) When exercising its or his functions, a tribunal or chairman shall ensure that information is not disclosed contrary to the interests of national security.

Dismissals in connection with industrial action

55.—(1) In relation to a complaint under section 111 of the Employment Rights Act 1996 (unfair dismissal: complaints to employment tribunal) that a dismissal is unfair by virtue of section 238A

of TULR(C)A(31) (participation in official industrial action) a tribunal or chairman may adjourn the proceedings where civil proceedings have been brought until such time as interim proceedings arising out of the civil proceedings have been concluded.

(2) In this rule —

- (a) “civil proceedings” means legal proceedings brought by any person against another person in which it is to be determined whether an act of that other person, which induced the claimant to commit an act, or each of a series of acts, is by virtue of section 219 of TULR(C)A not actionable in tort or in delict; and
- (b) the interim proceedings shall not be regarded as having concluded until all rights of appeal have been exhausted or the time for presenting any appeal in the course of the interim proceedings has expired.

Devolution issues

56.—(1) In any proceedings in which a devolution issue within the definition of the term in paragraph 1 of Schedule 6 to the Scotland Act 1998 arises, the Secretary shall as soon as reasonably practicable by notice inform the Advocate General for Scotland and the Lord Advocate thereof (unless they are a party to the proceedings) and shall at the same time —

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send the Advocate General for Scotland and the Lord Advocate a copy of the claim and the response.

(2) In any proceedings in which a devolution issue within the definition of the term in paragraph 1 of Schedule 8 to the Government of Wales Act 1998 arises, the Secretary shall as soon as reasonably practicable by notice inform the Attorney General and the National Assembly for Wales thereof (unless they are a party to the proceedings) and shall at the same time —

- (a) send a copy of the notice to the parties to the proceedings; and
- (b) send the Attorney General and the National Assembly for Wales a copy of the claim and the response.

(3) A person to whom notice is given in pursuance of paragraph (1) or (2) may within 14 days of receiving it, by notice to the Secretary, take part as a party in the proceedings, so far as they relate to the devolution issue. The Secretary shall send a copy of the notice to the other parties to the proceedings.

Transfer of proceedings between Scotland and England & Wales

57.—(1) The President (England and Wales) or a Regional Chairman may at any time, with the consent of the President (Scotland), order any proceedings in England and Wales to be transferred to an Employment Tribunal Office in Scotland if it appears to him that the proceedings could be (in accordance with regulation 19), and would more conveniently be, determined in an employment tribunal located in Scotland.

(2) The President (Scotland) or the Vice President may at any time, with the consent of the President (England and Wales), order any proceedings in Scotland to be transferred to an Employment Tribunal Office in England and Wales if it appears to him that the proceedings could be (in accordance with regulation 19), and would more conveniently be, determined in an employment tribunal located in England or Wales.

(3) An order under paragraph (1) or (2) may be made by the President, Vice President or Regional Chairman without any application having been made by a party. A party may apply for an order under paragraph (1) or (2) in accordance with rule 11.

(31) Section 238A was inserted by paragraphs 1 and 3 of Schedule 5 to the Employment Relations Act 1999 (c. 26).

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(4) Where proceedings have been transferred under this rule, they shall be treated as if in all respects they had been presented to the Secretary by the claimant.

References to the European Court of Justice

58. Where a tribunal or chairman makes an order referring a question to the European Court of Justice for a preliminary ruling under Article 234 of the Treaty establishing the European Community, the Secretary shall send a copy of the order to the Registrar of that Court.

Transfer of proceedings from a court

59. Where proceedings are referred to a tribunal by a court, these rules shall apply to them as if the proceedings had been sent to the Secretary by the claimant.

GENERAL PROVISIONS

Powers

60.—(1) Subject to the provisions of these rules and any practice directions, a tribunal or chairman may regulate its or his own procedure.

(2) At a Hearing, or a pre-hearing review held in accordance with rule 18(3), a tribunal may make any order which a chairman has power to make under these rules, subject to compliance with any relevant notice or other procedural requirements.

(3) Any function of the Secretary may be performed by a person acting with the authority of the Secretary.

Notices, etc

61.—(1) Any notice given or document sent under these rules shall (unless a chairman or tribunal orders otherwise) be in writing and may be given or sent —

- (a) by post;
- (b) by fax or other means of electronic communication; or
- (c) by personal delivery.

(2) Where a notice or document has been given or sent in accordance with paragraph (1), that notice or document shall, unless the contrary is proved, be taken to have been received by the party to whom it is addressed —

- (a) in the case of a notice or document given or sent by post, on the day on which the notice or document would be delivered in the ordinary course of post;
- (b) in the case of a notice or document transmitted by fax or other means of electronic communication, on the day on which the notice or document is transmitted;
- (c) in the case of a notice or document delivered in person, on the day on which the notice or document is delivered.

(3) All notices and documents required by these rules to be presented to the Secretary or an Employment Tribunal Office, other than a claim, shall be presented at the Employment Tribunal Office as notified by the Secretary to the parties.

(4) All notices and documents required or authorised by these rules to be sent or given to any person listed below may be sent to or delivered at —

- (a) in the case of a notice or document directed to the Secretary of State in proceedings to which she is not a party and which are brought under section 170 of the Employment

Rights Act, the offices of the Redundancy Payments Directorate of the Insolvency Service at PO Box 203, 21 Bloomsbury Street, London WC1B 3QW, or such other office as may be notified by the Secretary of State;

- (b) in the case of any other notice or document directed to the Secretary of State in proceedings to which she is not a party (or in respect of which she is treated as a party for the purposes of these rules by rule 51), the offices of the Department of Trade and Industry (Employment Relations Directorate) at 1 Victoria Street, London, SW1H 0ET, or such other office as be notified by the Secretary of State;
- (c) in the case of a notice or document directed to the Attorney General under rule 56, the Attorney General's Chambers, 9 Buckingham Gate, London, SW1E 7JP;
- (d) in the case of a notice or document directed to the National Assembly for Wales under rule 56, the Counsel General to the National Assembly for Wales, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ;
- (e) in the case of a notice or document directed to the Advocate General for Scotland under rule 56, the Office of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ;
- (f) in the case of a notice or document directed to the Lord Advocate under rule 56, the Legal Secretariat to the Lord Advocate, 25 Chambers Street, Edinburgh, EH1 1LA;
- (g) in the case of a notice or document directed to a court, the office of the clerk of the court;
- (h) in the case of a notice or document directed to a party:—
 - (i) the address specified in the claim or response to which notices and documents are to be sent, or in a notice under paragraph (5); or
 - (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom or, if the party is a corporate body, the body's registered or principal office in the United Kingdom, or, in any case, such address or place outside the United Kingdom as the President, Vice President or a Regional Chairman may allow;
- (i) 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 the person is a corporate body, the body's registered or principal office in the United Kingdom;

and a notice or document sent or given to the authorised representative of a party shall be taken to have been sent or given to that party.

(5) A party may at any time by notice to the Employment Tribunal Office and to the other party or parties (and, where appropriate, to the appropriate conciliation officer) change the address to which notices and documents are to be sent or transmitted.

(6) The President, Vice President or a Regional Chairman may order that there shall be substituted service in such manner as he may deem fit in any case he considers appropriate.

(7) In proceedings which may involve a payment out of the National Insurance Fund, the Secretary shall, where appropriate, send copies of all documents and notices to the Secretary of State whether or not she is a party.

(8) Copies of every document sent to the parties under rules 29, 30 or 32 shall be sent by the Secretary:—

- (a) in the case of proceedings under the Equal Pay Act, the Sex Discrimination Act or the Sex Discrimination Act 1986, to the Equal Opportunities Commission;
- (b) in the case of proceedings under the Race Relations Act, to the Commission for Racial Equality; and

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- (c) in the case of proceedings under the Disability Discrimination Act, to the Disability Rights Commission.

SCHEDULE 2

Regulation 16(2)

THE EMPLOYMENT TRIBUNALS (NATIONAL SECURITY) RULES OF PROCEDURE

Application of Schedule 2

1.—(1) The rules in this Schedule only apply to national security proceedings or proceedings where the right in rule 54(3) of Schedule 1 has been exercised.

(2) The rules in this Schedule modify the rules in Schedule 1 in relation to such proceedings. If there is conflict between the rules contained in this Schedule and those in any other Schedule to these Regulations, the rules in this Schedule shall prevail.

(3) Any reference in this Schedule to rule 54 is a reference to rule 54 in Schedule 1.

Notification of national security proceedings

2. When proceedings before an employment tribunal become national security proceedings the Secretary shall inform the parties of that fact in writing as soon as practicable.

Responding to a claim

3.—(1) If before the expiry of the period for entering the response —

- (a) a direction of a Minister of the Crown under rule 54(1)(b) (exclusion of claimant) applicable to this stage of the proceedings is given; or
- (b) a Minister of the Crown has informed the Secretary in accordance with rule 54(3) that he wishes to address the tribunal or chairman with a view to the tribunal or chairman making an order under rule 54(2) applicable to this stage of the proceedings to exclude the claimant;

rule 4(3)(d) (grounds for the response) of Schedule 1 shall not apply and paragraphs (2) and (3) of this rule shall apply instead.

(2) In a case falling within paragraph (1)(b), if the tribunal or chairman decides not to make an order under rule 54(2), the respondent shall within 28 days of the decision present to the Employment Tribunal Office the written grounds on which he resists the claim. On receiving the written grounds the Secretary shall send a copy of them to all other parties and they shall be treated as part of the response.

(3) In a case falling within paragraph (1)(b) where the tribunal or chairman makes the order, or in a case falling within paragraph (1)(a), the respondent shall with 44 days of the direction or order being made, present to the Employment Tribunal Office (and, where applicable, to the special advocate) the written grounds on which he resists the claim and they shall be treated as part of the response.

(4) The time limits in paragraphs (2) and (3) may be extended if it is just and equitable to do so and if an application is presented to the Employment Tribunal Office before the expiry of the relevant time limit. The application must explain why the respondent cannot comply with the time limit.

Serving of documents by the Secretary

4.—(1) The Secretary shall not send a copy of the response or grounds for the response to any person excluded from all or part of the proceedings by virtue of a direction or order given or made under rule 54.

(2) Where a Minister of the Crown has informed the Secretary in accordance with rule 54(3) that he wishes to address the tribunal or chairman with a view to an order being made under rule 54(2) (a) to exclude the claimant's representative from all or part of the proceedings, the Secretary shall not at any time before the tribunal or chairman has considered the Minister's representations, send a copy of the response or the grounds for the response to any person who may be excluded from all or part of the proceedings by such an order if it were made.

Default judgment

5. Rule 8(1) (default judgments) of Schedule 1 shall apply in relation to the time limit for presenting a response, but it shall not apply in relation to the time limits in paragraphs (2) and (3) of rule 3 in this Schedule.

Witness orders and disclosure of documents

6.—(1) Where —

- (a) a Minister has issued a direction or the tribunal or a chairman has made an order under rule 54 to exclude a claimant or his representative from all or part of the proceedings; and
- (b) a chairman or the tribunal is considering whether to make, or has made, an order described in rule 10(2)(c) or (d) of Schedule 1 (requiring a person to attend and give evidence or to produce documents) or under rule 8 of Schedule 3 or rule 7 of Schedule 4;

a Minister of the Crown (whether or not he is a party to the proceedings) may make an application to the tribunal or chairman objecting to the imposition of a requirement described in rule 10(2)(c) or (d) of Schedule 1 or under Schedules 3 or 4. If such an order has been made the Minister may make an application to vary or set aside the order.

(2) The tribunal or chairman shall hear and determine the Minister's application in private and the Minister shall be entitled to address the tribunal or chairman. The application shall be made by notice to the Secretary and the Secretary shall give notice of the application to all parties.

Case management discussions and pre-hearing reviews

7.—(1) Rule 14(4) (hearings – general) of Schedule 1 shall be modified in accordance with paragraph (2).

(2) In proceedings in which a special advocate has been appointed in respect of the claimant, if the claimant has been excluded from a case management discussion or a pre-hearing review, at such a hearing the claimant shall not have the right to advance oral argument, but oral argument may be advanced on the claimant's behalf by the special advocate.

Special advocate

8.—(1) In any proceedings in which there is an excluded person the tribunal or chairman shall inform the Attorney General (or in Scotland, the Advocate General) of the proceedings before it with a view to the Attorney General (or the Advocate General, in Scotland), if he thinks it fit to do so, appointing a special advocate to represent the interests of the claimant in respect of those parts of the proceedings from which —

- (a) any representative of his is excluded;

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- (b) both he and his representative are excluded; or
 - (c) he is excluded, where he does not have a representative.
- (2) A special advocate shall have a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990 or shall be an advocate or a solicitor admitted in Scotland.
- (3) Where the excluded person is the claimant, he shall be permitted to make a statement to the tribunal or chairman before the commencement of the proceedings, or the part of the proceedings, from which he is excluded.
- (4) Except in accordance with paragraphs (5) to (7), the special advocate may not communicate directly or indirectly with any person (including an excluded person) —
- (a) (except in the case of the tribunal, chairman and the respondent) on any matter contained in the grounds for the response referred to in rule 3(3);
 - (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 tribunal or chairman sat in private in accordance with a direction or an order given or made under rule 54.
- (5) The special advocate may apply for orders from the tribunal or chairman authorising him to seek instructions from, or otherwise to communicate with, an excluded person —
- (a) on any matter contained in the grounds for the response referred to in rule 3(3); or
 - (b) on any matter discussed or referred to during any part of the proceedings in which the tribunal or chairman sat in private in accordance with a direction or an order given or made under rule 54.
- (6) An application under paragraph (5) shall be made in writing to the Employment Tribunal Office and shall include the title of the proceedings and the grounds for the application.
- (7) The Secretary shall notify the Minister of an application under paragraph (5) and the Minister shall be entitled to address the tribunal or chairman on the application.
- (8) In these rules and those in Schedule 1, in any case in which a special advocate has been appointed to represent the interests of the claimant in accordance with paragraph (1), any reference to a party shall (save in those references specified in paragraph (9)) include the special advocate.
- (9) The following references to “party” or “parties” shall not include the special advocate —
- (a) regulation 9(3);
 - (b) in Schedule 1, rule 2(2)(b), 9, 10(2)(r), 10(3), the first two references in rule 11(4), 11(5), 18(7), 20, 22, 23, 27(3), 27(5), 29(3), 30(6)(f), 33(1), 34(2), all references in rule 38 save that in 38(10), 39, 40, 41, all references in rule 42 save that in rule 42(8), 44 to 48, 51, 54(1), the first reference in rule 54(3), 56(3), 61(3), 61(4)(a) and (b), and 61(7);
 - (c) in Schedule 4, rule 5(b), 6(5) and 10; and
 - (d) in Schedule 5, rule 4(b).

Hearings

- 9.—(1) Any hearing of or in connection with a claim shall, subject to any direction of a Minister of the Crown or order of a tribunal or chairman under rule 54 that all or part of the proceedings are to take place in private and subject to rule 16 of Schedule 1, take place in public.
- (2) A member of the Council on Tribunals shall not be entitled to attend any hearing taking place in private in his capacity as member where the hearing is taking place in private under a direction of a Minister of the Crown or an order of a tribunal or chairman under rule 54.
- (3) Subject to any direction of a Minister of the Crown or order of a tribunal or chairman under rule 54, a party shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal at a Hearing.

Reasons in national security proceedings

10.—(1) This rule applies to written reasons given under rule 30 of Schedule 1 for a judgment or order made by the tribunal or chairman in national security proceedings.

(2) Before the Secretary sends a copy of the written reasons (“the full written reasons”) to any party, or enters them in the Register under rule 32 of Schedule 1, he shall send a copy of the full written reasons to the Minister.

(3) If the Minister considers it expedient in the interests of national security and he has given a direction or the tribunal or a chairman has made an order under rule 54 in those proceedings, the Minister may —

- (a) direct the tribunal or chairman that the full written reasons shall not be disclosed to persons specified in the direction, and to prepare a further document (“the edited reasons”) setting out the reasons for the judgment or order, but with the omission of such of the information as is specified in the direction;
- (b) direct the tribunal or chairman that the full written reasons shall not be disclosed to persons specified in the direction, but that no further document setting out the tribunal or chairman’s reasons should be prepared.

(4) Where the Minister has directed the tribunal or chairman in accordance with paragraph 3(a), the edited reasons shall be signed by the chairman and initialled in each place where an omission has been made.

(5) Where a direction has been made under paragraph 3(a), the Secretary shall —

- (a) send a copy of the edited reasons referred to in paragraph 3(a) to any person specified in the direction and to the persons listed in paragraph (7);
- (b) enter the edited reasons in the Register, but omit from the Register the full written reasons; and
- (c) send a copy of the full written reasons to the persons listed in paragraph (7).

(6) Where a direction has been made under paragraph 3(b), the Secretary shall send a copy of the full written reasons to the persons listed in paragraph (7), but he shall not enter the full written reasons in the Register.

(7) The persons to whom full written reasons should be sent in accordance with paragraph (5) or (6) are —

- (a) the respondent;
- (b) the claimant or the claimant’s representative if they were not specified in the direction made under paragraph (3);
- (c) if applicable, the special advocate;
- (d) where the proceedings were referred to the tribunal by a court, to that court; and
- (e) where there are proceedings before a superior court (or in Scotland, an appellate court) relating to the decision in question, to that court.

Correction of written reasons

11. Where written reasons (whether “full” or “edited”) have been omitted from the Register in accordance with rule 10 and they are corrected by certificate under rule 37 of Schedule 1, the Secretary shall send a copy of the corrected reasons to the same persons who had been sent the reasons in accordance with rule 10.

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Review of judgments or decisions

12. In rule 34(3) of Schedule 1 (review of other judgments and decisions), the reference in sub-paragraph (c) to decisions being made in the absence of a party does not include reference to decisions being made in the absence of a party where this is done in accordance with a direction given or an order made under rule 54.

SCHEDULE 3

Regulation 16(3)(a)

THE EMPLOYMENT TRIBUNALS (LEVY APPEALS) RULES OF PROCEDURE

For use only in proceedings on levy appeals

Application of Schedule 1

1. Subject to rules 9 and 10 of this Schedule, Schedule 1 shall apply to levy appeals. The rules in this Schedule modify the rules in Schedule 1 in relation to levy appeals. If there is conflict between the rules contained in this Schedule and those in Schedule 1, the rules in this Schedule shall prevail.

Definitions

- 2.** In this Schedule and in relation to proceedings to which this Schedule applies —
- “Board” means in relation to an appeal the respondent industrial training board;
 - “Industrial Training Act” means the Industrial Training Act 1982⁽³²⁾;
 - “levy” means a levy imposed under section 11 of the Industrial Training Act;
 - “levy appeal” means an appeal against an assessment to a levy;
 - “respondent” means the Board.

Notice of Appeal

3. A person wishing to appeal an assessment to a levy (the appellant) shall do so by sending to the Board two copies of a notice of appeal which must be substantially in accordance with Form 1 in the Annex to this Schedule, and they must include the grounds of their appeal.

Action on receipt of appeal

4.—(1) Subject to rules 5 and 6, the Board shall, within 21 days of receiving the notice of appeal send the following documents to the Employment Tribunal Office —

- (a) one copy of the notice of appeal;
- (b) a copy of the assessment notice and of any notice by the Board allowing further time for appealing;
- (c) a notice giving the Board’s address for service under these rules where that address is different from the address specified in the assessment notice as the address for service of a notice of appeal; and
- (d) any representations in writing relating to the appeal that the Board wishes to submit to the tribunal.

(32) 1982 c. 10.

- (2) Failure to comply with any provision of this rule or rule 5 shall not make the appeal invalid.

Requests for further information

5.—(1) Subject to rule 6, this rule applies when, on receiving the notice of appeal, the Board considers that it requires further information on the appellant's grounds for the appeal and of any facts relevant to those grounds.

(2) The Board shall send the appellant a notice specifying the further information required by the Board within 21 days of receiving the notice of appeal.

(3) The appellant shall send the Board two copies of the further information within 21 days of receiving the notice requesting the information, or within such further period as the Board may allow.

(4) Subject to paragraph (5), within 21 days of receiving the further information the Board shall send the following documents to the Employment Tribunal Office —

- (a) the documents listed in rule 4(1);
- (b) a copy of the notice requesting further information;
- (c) any further information which has been provided to the Board; and
- (d) any representations in writing regarding such information which the Board wishes to submit to the tribunal.

(5) If further information is not received by the Board within the time limit, the documents listed in sub-paragraphs (a) and (b) of paragraph (4) shall be sent by the Board to the Employment Tribunal Office —

- (a) within 50 days of the receipt of the notice of appeal by the Board; or
- (b) if the Board has allowed a further period of time for delivery of further particulars under paragraph (3), within 7 days of the end of that period.

Withdrawal of appeal or assessment

6.—(1) The appellant may withdraw the notice of appeal by notice given to the Board at any time and in that event no further action shall be taken in relation to the appeal.

(2) When an assessment is withdrawn by the Board, it shall notify the Employment Tribunal Office and no further action shall be taken in relation to the appeal.

Entry of appeal

7.—(1) The Secretary shall as soon as reasonably practicable after receiving from the Board the relevant documents in accordance with rule 4(1), 5(4) or 5(5) —

- (a) give notice to the appellant and to the Board of the case number of the appeal (which must from then on be referred to in all correspondence relating to the appeal) and of the address to which notices and other communications to the Employment Tribunal Office shall be sent;
- (b) give notice to the appellant of the Board's address for service; and
- (c) send to the appellant a copy of any representations in writing that the Board has submitted to the tribunal under rule 4 or 5.

Order for further information

8.—(1) In any case in which the appellant has not sent to the Board further information which has been requested by the Board in accordance with rule 5, a chairman or tribunal may, on the application of the Board, by notice order the appellant to supply such further information as may be specified in

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the notice, and the appellant shall send two copies of such information to the Employment Tribunal Office within such time as the chairman or tribunal may direct.

(2) As soon as is reasonably practicable after receiving the further information from the appellant, the Secretary shall send a copy of the information to the Board.

(3) An order made under paragraph (1) shall be treated as an order made under rule 10 of Schedule 1 for the purposes of rule 13 of Schedule 1 (compliance with orders and practice directions).

Provisions of Schedule 1 which do not apply to levy appeals

9. The following rules in Schedule 1 shall not apply in relation to levy appeals: rules 1 to 9, 16(1)(c), 18(2)(c) and (e), 20 to 25, 33, 34(1)(a), 34(2), 34(4), 38(4), 39, 42(4), 43, 47, 49 to 53, 55, and paragraphs (4)(a), (7) and (8) of rule 61. All references in Schedule 1 to the rules listed in this rule shall have no effect in relation to a levy appeal.

Modification of Schedule 1

10. Schedule 1 shall be further modified in relation to levy appeals as follows —

- (a) all references in Schedule 1 to a claim or claimant shall be read as references to a levy appeal or to an appellant in a levy appeal respectively and as the context may require; and
- (b) in rule 61 (Notices, etc.) after paragraph 4(i) insert:—
 - “(j) in the case of a notice of an appeal brought under the Industrial Training Act, the Board’s address for service specified in the assessment notice;
 - (k) in the case of any other document directed to the Board, the Board’s address for service;”.

ANNEX

FORM 1

INDUSTRIAL TRAINING ACT 1982

NOTICE OF APPEAL AGAINST AN ASSESSMENT

TO:

*** INDUSTRIAL TRAINING BOARD**

.....[].....

.....

.....

AND TO:

The Secretary of Tribunals (England and Wales) + (Scotland)

I / We + of

.....#.....

.....

hereby give notice that I / we + appeal to an employment tribunal under the Industrial Training Act 1982, section 12, against the assessment to the levy made by the above-mentioned industry training board on20..... being the assessment numbered

Grounds of appeal

The grounds of my / our + appeal are as follows:

Address for service

All communications regarding the appeal should be addressed to me / us + at#.....

.....

to my / our + Solicitor(s) Agent(s) ~,

..... at#.....

Date 20.....

Signed

* Insert name of the Board.

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[] Insert the address of the Board.

± Delete as relevant.

Insert address applicable.

~ If the notice is signed on behalf of the appellant, the signatory must state in what capacity or what authority he signs.

SCHEDULE 4

Regulation 16(3)(b)

THE EMPLOYMENT TRIBUNALS (HEALTH AND SAFETY – APPEALS AGAINST IMPROVEMENT AND PROHIBITION NOTICES) RULES OF PROCEDURE

For use only in proceedings in an appeal against an improvement or prohibition notice

Application of Schedule 1

1. Subject to rules 11 and 12 of this Schedule, Schedule 1 shall apply to appeals against an improvement notice or a prohibition notice. The rules in this Schedule modify the rules in Schedule 1 in relation to such appeals. If there is conflict between the rules contained in this Schedule and those in Schedule 1, the rules in this Schedule shall prevail.

Definitions

2. In this Schedule and in relation to proceedings to which this Schedule applies —
- “Health and Safety Act” means the Health and Safety at Work etc. Act 1974⁽³³⁾;
 - “improvement notice” means a notice under section 21 of the Health and Safety Act;
 - “inspector” means a person appointed under section 19(1) of the Health and Safety Act;
 - “prohibition notice” means a notice under section 22 of the Health and Safety Act; and
 - “respondent” means the inspector who issued the improvement notice or prohibition notice which is the subject of the appeal.

Notice of appeal

3. A person wishing to appeal an improvement notice or a prohibition notice (the appellant) shall do so by sending to the Employment Tribunal Office two copies of a notice of appeal which must include the following —

- (a) the name and address of the appellant and, if different, an address to which he requires notices and documents relating to the appeal to be sent;
- (b) the date of the improvement notice or prohibition notice appealed against and the address of the premises or the place concerned;
- (c) the name and address of the respondent;
- (d) details of the requirements or directions which are being appealed; and
- (e) the grounds for the appeal.

(33) 1974 c. 37.

Time limit for bringing appeal

4.—(1) Subject to paragraph (2), the notice of appeal must be sent to the Employment Tribunal Office within 21 days from the date of the service on the appellant of the notice appealed against.

(2) A tribunal may extend the time mentioned above where it is satisfied, on an application made in writing to the Secretary either before or after the expiration of that time, that it is or was not reasonably practicable for an appeal to be brought within that time.

Action on receipt of appeal

5. On receiving the notice of appeal the Secretary shall —

- (a) send a copy of the notice of appeal to the respondent; and
- (b) inform the parties in writing of the case number of the appeal (which must from then on be referred to in all correspondence relating to the appeal) and of the address to which notices and other communications to the Employment Tribunal Office shall be sent.

Application for a direction suspending the operation of a prohibition notice

6.—(1) When an appeal is brought against a prohibition notice, an application may be made by the appellant under section 24(3)(b) of the Health and Safety Act for a direction suspending the operation of the prohibition notice until the appeal is determined or withdrawn. The application must be presented to the Employment Tribunal Office in writing and shall include —

- (a) the case number of the appeal, or if there is no case number sufficient details to identify the appeal; and
- (b) the grounds on which the application is made.

(2) The Secretary shall send a copy of the application to the respondent as soon as practicable after it has been received and shall inform the respondent that he has the opportunity to submit representations in writing if he so wishes, within a specified time but not less than 7 days.

(3) The chairman shall consider the application and any representations submitted by the respondent, and may —

- (a) order that the application should not be determined separately from the full hearing of the appeal;
- (b) order that the operation of the prohibition notice be suspended until the appeal is determined or withdrawn;
- (c) dismiss the appellant's application; or
- (d) order that the application be determined at a Hearing (held in accordance with rule 26 of Schedule 1).

(4) The chairman must give reasons for any decision made under paragraph (3) or made following a Hearing ordered under paragraph (3)(d).

(5) A decision made under paragraph (3) or made following a Hearing ordered under paragraph (3)(d) shall be treated as a decision which may be reviewed upon the application of a party under rule 34 of Schedule 1.

General power to manage proceedings

7.—(1) The chairman may at any time on the application of a party, make an order in relation to any matter which appears to him to be appropriate. Such orders may be those listed in rule 10(2) of Schedule 1 (subject to rule 11 below) or such other orders as he thinks fit. Subject to the case management rules in Schedule 1, orders may be issued as a result of a chairman considering the

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papers before him in the absence of the parties, or at a hearing (see regulation 2 for the definition of “hearing”).

(2) If the parties agree in writing upon the terms of any decision to be made by the tribunal or chairman, the chairman may, if he thinks fit, decide accordingly.

Appointment of an assessor

8. The President, Vice President or a Regional Chairman may, if he thinks fit, appoint in accordance with section 24(4) of the Health and Safety Act a person having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal or chairman as an assessor.

Right to withdraw proceedings

9.—(1) An appellant may withdraw all or part of the appeal at any time. This may be done either orally at a hearing or in writing in accordance with paragraph (2).

(2) To withdraw an appeal or part of one in writing the appellant must inform the Employment Tribunal Office in writing of the appeal or the parts of it which are to be withdrawn.

(3) The Secretary shall inform all other parties of the withdrawal. Withdrawal takes effect on the date on which the Employment Tribunal Office (in the case of written notifications) or the tribunal or chairman receives notice of it and where the whole appeal is withdrawn proceedings are brought to an end against the respondent on that date and the tribunal or chairman shall dismiss the appeal.

Costs and expenses

10.—(1) A tribunal or chairman may make an order (“a costs order”) that a party (“the paying party”) make a payment in respect of the costs incurred by another party (“the receiving party”).

(2) For the purposes of paragraph (1) “costs” shall mean fees, charges, disbursements, expenses or remuneration incurred by or on behalf of a party in relation to the proceedings. In Scotland all references in this Schedule to costs or costs orders shall be read as references to expenses or orders for expenses.

(3) The amount of a costs order against the paying party can be determined in the following ways —

- (a) the tribunal may specify the sum which the party must pay to the receiving party, provided that sum does not exceed £10,000;
- (b) the parties may agree on a sum to be paid by the paying party to the receiving party and if they do so the costs order shall be for the sum so agreed;
- (c) the tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the second party with the amount to be paid being determined by way of detailed assessment in a County Court in accordance with the Civil Procedure Rules or, in Scotland, as taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order.

(4) The tribunal or chairman shall have regard to the paying party’s ability to pay when considering whether it or he shall make a costs order or how much that order should be.

(5) For the avoidance of doubt, the amount of a costs order made under either paragraph (4)(b) or (c) may exceed £10,000.

Provisions of Schedule 1 which do not apply to appeals against improvement notices or prohibition notices

11. The following rules in Schedule 1 shall not apply in relation to appeals against improvement and prohibition notices: rules 1 to 9, 10(1), 10(2)(g), (i), (k), (l) and (r), 12, 13, 16(1)(c), 18(2)(c) and (e), 18(8), 20 to 25, 29(3), 33, 34(1)(a), 34(2), 38 to 47, 49 to 53, 55, and 61(4)(a), (7) and (8). All references in Schedule 1 to the rules listed in this rule shall have no effect in relation to an appeal against an improvement notice or a prohibition notice.

Modification of Schedule 1

12. Schedule 1 shall be further modified so that all references in Schedule 1 to a claim shall be read as references to a notice of appeal or to an appeal against an improvement notice or a prohibition notice, as the context may require, and all references to the claimant shall be read as references to the appellant in such an appeal.

SCHEDULE 5

Regulation 16(3)(c)

THE EMPLOYMENT TRIBUNALS (NON-DISCRIMINATION NOTICES APPEALS) RULES OF PROCEDURE

For use only in proceedings in an appeal against a non-discrimination notice

Application of Schedule 1

1. Subject to rules 5 and 6 of this Schedule, Schedule 1 shall apply to appeals against a non-discrimination notice. The rules in this Schedule modify the rules in Schedule 1 in relation to such appeals. If there is conflict between the rules contained in this Schedule and those in Schedule 1, the rules in this Schedule shall prevail.

Definitions

2. In this Schedule and in relation to proceedings to which this Schedule applies —

“appeal”, unless the context requires otherwise, means an appeal referred to in section 68(1) (a) of the Sex Discrimination Act, in section 59(1)(a) of the Race Relations Act or, as the case may be, in paragraph 10(1) and (2)(a) of Schedule 3 to the Disability Rights Commission Act;

“Disability Rights Commission Act” means the Disability Rights Commission Act 1999⁽³⁴⁾;

“non-discrimination notice” means a notice under section 67 of the Sex Discrimination Act, under section 58 of the Race Relations Act or, as the case may be, under section 4 of the Disability Rights Commission Act; and

“respondent” means the Equal Opportunities Commission established under section 53 of the Sex Discrimination Act, the Commission for Racial Equality established under section 43 of the Race Relations Act or, as the case may be, the Disability Rights Commission established under section 1 of the Disability Rights Commission Act.

Notice of Appeal

3. A person wishing to appeal a non-discrimination notice (the appellant) shall do so by sending to the Employment Tribunal Office two copies of a notice of appeal which must be in writing and must include the following —

(34) 1999 c. 17.

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- (a) the name and address of the appellant and, if different, an address to which he requires notices and documents relating to the appeal to be sent;
- (b) the date of the non-discrimination notice appealed against;
- (c) the name and address of the respondent;
- (d) details of the requirements which are being appealed; and
- (e) the grounds for the appeal.

Action on receipt of appeal

- 4. On receiving the notice of appeal the Secretary shall —
 - (a) send a copy of the notice of appeal to the respondent; and
 - (b) inform the parties in writing of the case number of the appeal (which must from then on be referred to in all correspondence relating to the appeal) and of the address to which notices and other communications to the Employment Tribunal Office shall be sent.

Provisions of Schedule 1 which do not apply to appeals against non-discrimination notices

5. The following rules in Schedule 1 shall not apply in relation to appeals against a non-discrimination notice: rules 1 to 9, 16(1)(c), 18(2)(c) and (e), 20 to 24, 33, 34(1)(a), 34(2), 34(4), 38(4), 39, 42(4), 43, 47, 49 to 53, 55, and paragraphs (4)(a), (7) and (8) of rule 61. All references in Schedule 1 to the rules listed in this rule shall have no effect in relation to an appeal against a non-discrimination notice.

Modification of Schedule 1

6. Schedule 1 shall be further modified so that all references in Schedule 1 to a claim shall be read as references to a notice of appeal or to an appeal against a non-discrimination notice, as the context may require, and all references to the claimant shall be read as references to the appellant in such an appeal.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations re-enact the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001 and the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001 with amendments. These Regulations have been drafted in simpler language and have been re-numbered and re-ordered. In addition to minor and drafting amendments and the updating of statutory and other references these Regulations make the following changes of substance.

Regulation 7 introduces the office of Vice President in Scotland to reflect the fact that Scotland is not a Region. The role of the Vice President is equivalent to that of a Regional Chairman in England and Wales.

Regulation 13 gives the President power to make practice directions in relation to the area (either Scotland or England and Wales) for which he is responsible.

Regulation 14 delegates to the Secretary of State the power to prescribe forms which are to be used by claimants and respondents in proceedings before an Employment Tribunal. The prescribed forms do not have to be used in relation to the proceedings listed in regulation 14(3).

Regulation 16 provides that Schedule 1 to the Regulations is to apply to all proceedings before an Employment Tribunal. However Schedule 1 is modified by Schedules 2 to 5 in relation to proceedings to which each of those Schedules apply respectively.

Regulation 17 provides that any judgments and their associated written reasons are to be entered on the public register.

Regulation 19 defines the circumstances in which an Employment Tribunal in England and Wales and in Scotland has jurisdiction.

Regulation 20 makes transitional provision in relation to proceedings which were commenced prior to 1st October 2004. The Regulations apply to all proceedings commenced on or after 1st October 2004.

Schedule 1 to the Regulations introduces some new terminology such as “claim”, “claimant”, “response”, “case management discussion”, “default judgment” and “judgment”.

Rules 1 to 3 of Schedule 1 provide that as from 6 April 2005 a claim must be presented using a prescribed form and that if it is not used the claim will not be accepted. The provision of certain information (“the required information”) is mandatory if the claim is to be accepted and allowed to proceed. Much of the required information is designed to establish whether the statutory disciplinary and grievance procedures under the Employment Act 2002 (Dispute Resolution) Regulations 2004 (S.I.2004/752) are applicable and have been followed.

Rule 4 of Schedule 1 provides that the respondent has 28 days from the date on which he was sent the claim in order to present his response. That time limit may be extended if an application to do so is made before the time limit has expired. As from 6 April 2005 a response must be presented using a prescribed form.

Rule 6 of Schedule 1 provides that the response will not be accepted if the required information in relation to the response has not been provided or, after 6th April 2005, the prescribed form has not been used.

Rule 7 of Schedule 1 sets out the details of any counterclaim which must be provided and it allows a chairman to establish the procedure which is to apply to a counterclaim in particular proceedings. Procedure in relation to counterclaims generally may be provided for by practice direction.

Rule 8 of Schedule 1 introduces default judgments where no response has been accepted in proceedings and the time limit for entering the response has expired.

Rules 10 to 13 of Schedule 1 describe the tribunal’s case management powers and the procedure for making applications in proceedings.

Rules 14 to 19 of Schedule 1 describe the different types of hearing which may be held, how such hearings are to be conducted and the orders which may be made at different types of hearings.

Rules 22 to 24 of Schedule 1 provide that in relation to the majority of proceedings brought before Employment Tribunals there shall be a fixed period of conciliation of either “short” or “standard” length. Rule 23 makes provision for the early termination of such conciliation periods in certain circumstances.

Rule 25 of Schedule 1 establishes the procedure to be followed in order to withdraw a claim.

Rule 26 of Schedule 1 defines a Hearing (as opposed to a “hearing” which is defined in regulation 2).

Rule 28 of Schedule 1 defines a judgment and an order. Rule 29 specifies the matters which are to be included in a judgment. Rule 30 sets out the circumstances in which it is possible to obtain written reasons for a judgment.

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Rules 33 to 36 of Schedule 1 establish new procedures for reviewing certain judgments and decisions made by a tribunal or chairman.

Rules 38 to 41 of Schedule 1 describe the circumstances in which a costs order (or in Scotland, an order for expenses) may be made. A costs order may only be made if the party in favour of whom the order is made has been legally represented at the relevant time. The relevant time will generally be at the Hearing. The ability of the paying party to pay the costs order may also be taken into account by the tribunal or chairman.

Rules 42 to 45 of Schedule 1 describe the circumstances in which a preparation time order may be made. A preparation time order may only be made if the party in favour of whom the order is made has not been legally represented at the relevant time. The relevant time will generally be at the hearing. The ability of the paying party to pay the preparation time order may be taken into account by the tribunal or chairman. Rule 45 sets out how the amount of a preparation time order is calculated.

Rule 46 of Schedule 1 provides that a tribunal or chairman may not make a preparation time order and a costs order in favour of the same party in the same proceedings.

Rules 48 of Schedule 1 introduces wasted costs orders which may be made against representatives, but not representatives who are not acting pursuit of profit in relation to those proceedings.

Rule 50 of Schedule 1 provides that a tribunal or chairman may make a temporary restricted reporting order without holding a hearing and sets out the circumstances in which such an order will lapse. Provision is also included that any person may make representations to the tribunal or chairman before a full restricted reporting order is made.

Rule 57 of Schedule 1 provides that proceedings may be transferred between Scotland and England and Wales where the relevant tribunal has jurisdiction in accordance with regulation 19.

Schedule 3 modifies the application of Schedule 1 in relation to levy appeals under the Industrial Training Act 1982.

Schedule 4 modifies the application of Schedule 1 in relation to appeals against an improvement or prohibition notice under the Health and Safety at Work etc. Act 1974.

Schedule 5 modifies the application of Schedule 1 in relation to appeals against a non-discrimination notice under either the Sex Discrimination Act 1975, the Race Relations Act 1976 or the Disability Rights Commission Act 1999.

A Regulatory Impact Assessment in respect of these Regulations is available and a copy can be obtained from the Department of Trade and Industry, Employment Relations Directorate, 1 Victoria Street, London SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.