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STATUTORY INSTRUMENTS

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**2005 No. 1865**

**EMPLOYMENT TRIBUNALS**

**The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) (No. 2) Regulations 2005**

<i>Made</i>	- - - -	<i>28th June 2005</i>
<i>Laid before Parliament</i>		<i>11th July 2005</i>
<i>Coming into force</i>	- -	<i>1st October 2005</i>

The Secretary of State, in exercise of the powers conferred upon her by sections 4(6) and (6A), 7(1), (3), (3A), 10(6) and 41(4) of the Employment Tribunals Act 1996<sup>(1)</sup>, paragraph 36 of Schedule 8 to the Government of Wales Act 1998<sup>(2)</sup> and paragraph 37 of Schedule 6 to the Scotland Act 1998<sup>(3)</sup>, and after consultation with the Council of Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992<sup>(4)</sup>, hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) (No. 2) Regulations 2005 and shall come into force on 1st October 2005.

**Amendment**

2.—(1) The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004<sup>(5)</sup> shall be amended as follows—

(2) In Regulation 1(1)(a), (b), (c), (d) (e) and (f) add “2004” after “Procedure”.

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(1) 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 Paragraph 7(3)(f)(i) was repealed by paragraph 14(2) of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998 and paragraph 7(3)(f)(i) was inserted by section 24(1) of the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). Section 7(3A) was 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 10 was substituted, and section 10A was inserted, by paragraph 3 of Schedule 8 to the Employment Relations Act 1999. Section 10(6) was amended by section 36 of the Employment Relations Act 2004 (c. 24).

(2) 1998 c. 38

(3) 1998 c. 46

(4) 1992 c. 53

(5) S.I. 2004/1861, amended by S.I.2004/2351; there is another amending instrument which is not relevant.

- (3) In Regulation 2 —
- (a) delete “(Scotland)” from the definition of “old (England & Wales) regulations”;
  - (b) insert “(Scotland)” before “Regulations” in the definition of “old (Scotland) regulations”.
- (4) In Schedule 1—
- (a) in rule 9(b) replace “rule 34(a), (b) or (e)” with “rule 34(3)(a), (b) or (e)”;
  - (b) in rule 10(5) delete “either”;
  - (c) in rule 17(1) replace “may be held in private” with “shall be held in private”;
  - (d) in rule 18(6) replace “order” in lines 2 and 4 with “orders”;
  - (e) in rule 22(4) insert “the day following” after “commences on” in the first line;
  - (f) in rule 22(5) insert “(e) regulations 13, 14(2) or 16(1) of the Working Time Regulations 1998c (right to paid annual leave).”;
  - (g) to rule 22(5)(e) add the footnote “(c) [S.I.1998/1833](#).”;
  - (h) in rule 30(3) replace “Subject to paragraph (1)” with “Where oral reasons have been provided”;
  - (i) in rules 38(2), 39(1) and 43(1) insert “or chairman” after “tribunal”;
  - (j) in rule 54(2)(a) insert “in relation to particular proceedings before it” after “do” and “in relation to particular Crown employment proceedings” between “done” and “under”.
- (5) In Schedule 4, rule 10(2), replace “,expenses or remuneration” with “or expenses”.
- (6) In Schedule 6—
- (a) in rule 7(2) insert “conducted by a tribunal” before “composed”;
  - (b) in rule 7(4)(a) replace “Subject” with “subject”;
  - (c) in rule 7(6) delete “the” preceding “some”;
  - (d) in the Annex insert “8 weeks” into the column headed “Claims involving an independent expert” immediately above the words “Independent expert’s report”.

*Gerry Sutcliffe*  
Parliamentary Under-Secretary for Employment  
Relations and Consumer Affairs  
Department of Trade and Industry

28th June 2005

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## EXPLANATORY NOTE

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

These Regulations come into force on 1st October 2005 and they amend the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I.2004/1861) (as amended by the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2004 (S.I. 2004/2351) and the Employment Tribunals (Constitution and Rules of Procedure (Amendment) Regulations 2005 (S.I.2005/435)) (“the main Regulations”)

The main purpose of these Regulations is to implement, by regulation 2(4)(j), section 36 of the Employment Relations Act 2004 (c. 24) (“the 2004 Act”), which provides that certain powers available to employment tribunals under rule 54(1) (national security proceedings) of the main Regulations can be used in particular proceedings, whether or not they are Crown employment proceedings, if the tribunal or the chairman considers it expedient in the interests of national security.

These Regulations also make minor clarifications to and correct drafting errors in the main Regulations.

The final Regulatory Impact Assessment (“RIA”) for the 2004 Act indicated that any impact on business arising from section 36 (the national security amendment) would be likely to be negligible. In view of this, and because none of the other amendments made by these Regulations is substantive, and will not therefore impact on business, charities, voluntary bodies or the public sector, a full RIA in respect of these Regulations has not been prepared.