

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT APPEAL TRIBUNAL (CORONAVIRUS) (AMENDMENT)
RULES 2020

2020 No. 415

1. Introduction

1.1 This explanatory memorandum has been prepared by The Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Rules temporarily amend the Employment Appeal Tribunal Rules 1993 (“the 1993 Rules”), which govern procedure in the Employment Appeal Tribunal.

2.2 These Rules amend the 1993 Rules to provide that a hearing before the Employment Appeal Tribunal (“the Appeal Tribunal”) may be conducted by means of electronic communication. The amendment made by the Rules will expire on the same day as section 55 of the Coronavirus Act 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 The Tribunal Procedure Rules require that an SI subject to negative procedure should not be laid at least 21 calendar days before it is due to come into force. However, this SI will come into force the day after it is laid. Breaching this rule is required due to the urgency of introducing this temporary measure to limit the spread of COVID-19.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales, and Scotland.

4.2 The territorial application of this instrument is England, Wales, and Scotland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 Section 30 of the Employment Tribunals Act 1996 (“the 1996 Act”) provides for rules to be made by the Lord Chancellor governing the practice and procedure to be followed by the EAT.

7. Policy background

What is being done and why?

- 7.1 The Appeal Tribunal is responsible for handling appeals against decisions made by the Employment Tribunal.
- 7.2 In response to the COVID-19 outbreak, these Rules temporarily amend the 1993 Rules to provide that a hearing may be conducted by means of electronic communication. However, an oral hearing via electronic communication will only be conducted if the Appeal Tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the Appeal Tribunal hears and see any witness as seen by the Appeal Tribunal. Allowing hearings to be conducted via electronic communication will allow the Appeal Tribunal to deal with hearings promptly and safely.
- 7.3 Presently, an oral hearing before the Appeal Tribunal must take place in public, unless the Tribunal members consider it necessary to proceed with a private hearing as set out in the 1993 Rules.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No consolidation is taking place.

10. Consultation outcome

- 10.1 In accordance with Section 30(1) of the Employment Tribunals Act 1996, the Lord Chancellor has consulted with the Lord President of the Court of Session in order to make these rules.
- 10.2 A public consultation was not conducted due to the urgency of introducing this temporary measure to limit the spread of COVID-19.

11. Guidance

- 11.1 This Order does not attract the need for guidance but general information about tribunals can be found on the Ministry of Justice website at:
<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about>

12. Impact

- 12.1 The impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact is expected to be minimal and well below the threshold of £5 million per annum at which an assessment must be prepared

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Ministry of Justice will keep the Employment Appeal Tribunal (Coronavirus) (Amendment) Rules 2020 under review.

15. Contact

- 15.1 John Bailes at the Ministry of Justice Telephone: 07971 489928 or email: john.bailes@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Dominic Lake, Deputy Director for Administrative Justice, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under-Secretary of State Chris Philp MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.