

Fundamental review of  
employment tribunal  
rules: employment  
tribunal rules of  
procedure

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# EMPLOYMENT TRIBUNAL RULES OF PROCEDURE

## INTRODUCTORY AND GENERAL

1. **Overriding Objective.** The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and 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 and importance of the issues;
  - (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
  - (d) avoiding delay, so far as compatible with proper consideration of the issues; and
  - (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties shall assist the Tribunal to further the overriding objective and shall co-operate generally.

2. **Alternative dispute resolution.** A Tribunal shall wherever practicable and appropriate encourage and facilitate the use by the parties of the services of Acas, judicial or other mediation, or other means of resolving their disputes by agreement.

3. **Interpretation**

(1) In these Rules—

“Acas” means the Advisory, Conciliation and Arbitration Service referred to in section 247 of the Trade Union and Labour Relations (Consolidation) Act 1992;

“claim” means any proceedings before an Employment Tribunal making a complaint or complaints;

“claimant” means the person or persons bringing the claim;

“complaint” means anything that is referred to in the relevant legislation as a claim, complaint, reference, application or appeal;

“Convention rights” has the same meaning as in section 1 of the Human Rights Act 1998;

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

“employee’s contract claim” means a claim brought by an employee in accordance with articles 3 and 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1990 or articles 3 and 7 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1990;

“employer’s contract claim” means a claim brought by an employer in accordance with articles 4 and 8 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1990 or articles 4 and 8 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1990;

“Employment Judge” or “Judge” means an Employment Judge within the meaning of section 3A of the Employment Tribunals Act 1996;

“Employment Tribunal” or “Tribunal” means an employment tribunal established in accordance with regulation #, and in relation to any proceedings means the tribunal responsible for the proceedings in question;

“full tribunal” means a Tribunal constituted in accordance with section 4 (1) of the Employment Tribunals Act 1996;

“Health and Safety Act” means the Health and Safety at Work etc. Act 1974;

“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;

“levy” means a levy imposed under section 11 of the Industrial Training Act 1982;

“levy appeal” means an appeal against an assessment to a levy;

“prescribed form” means any appropriate form prescribed by the Secretary of State in accordance with regulation #;

“present” means deliver (by any means permitted under rule 80) to a tribunal office;

“President” means the President of Employment Tribunals (England and Wales) or President of Employment Tribunals (Scotland), as the case may be, appointed in accordance with regulation #;

“prohibition notice” means a notice under section 22 of the Health and Safety Act;

“Regional Employment Judge” means a person appointed or nominated to that position in accordance with regulation #;

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

“respondent” means the person or persons against whom a claim is made;

“tribunal office” means any Employment Tribunal 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 the Tribunal, and in relation to particular proceedings it is the office notified to the parties as dealing with the proceedings;

“unlawful act notice” means a notice under section 21 of the Equality Act 2006;

“Vice President” means a person appointed or nominated to that position in accordance with regulation #;

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

(2) Any reference in the Rules to a Tribunal applies to both a full tribunal and to an Employment Judge acting alone (in accordance with section 4 (2) or (6) of the Employment Tribunals Act 1996).

(3) Orders and other decisions of the Tribunal may be variously described, as seems most appropriate to the Employment Judge, but in these Rules the following terms have specific meanings—

“case management direction” means an order or decision of any kind in relation to the conduct of proceedings but does not include the determination of any substantive issue;

“judgment” means any decision which finally determines a claim, or part of a claim, as regards either liability, remedy or costs (including preparation time and wasted costs) or any issue which is capable of finally disposing of any such claim, even if it will not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue), whether made at a preliminary hearing or a final hearing (but not including any decision under rules 12 or 18).

(4) Where these Rules refer to the Tribunal carrying out administrative rather than judicial functions, those functions will be performed by the staff of the relevant tribunal office.

#### 4. Rules about time

(1) An act required by these Rules or by any order of a Tribunal to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day. “Working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971.

(3) 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 response must be presented within 28 days of the date on which the respondent was sent a copy of the claim: if the claim was sent on 1st October the last day for presentation of the response is 29th October.)

(4) 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 present representations in writing for consideration by a Tribunal at a hearing, they must be presented 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.)

(5) Where the Tribunal imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(6) Where time is specified by reference to the date when a document is sent to a person by the Tribunal, the date when the document was sent shall, unless the contrary is proved, be regarded as the date endorsed on the document as the date of sending or, if there is no such endorsement, the date shown on the letter accompanying the document.

5. **Extending or shortening time.** The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.
6. **Irregularities and non-compliance.** A failure to comply with any provision of these Rules or any order of the Tribunal does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include—
  - (a) waiving or varying the requirement;
  - (b) striking out the claim or the response, in whole or in part, in accordance with rule 34;
  - (c) barring or restricting a party's participation in the proceedings; or
  - (d) awarding costs in accordance with rules 69 - 75.

7. **Presidential Guidance.** The Presidents may publish guidance for England and Wales and for Scotland respectively as to matters of practice and as to how the powers conferred by these Rules may be exercised in typical situations. Tribunals must have regard to any such guidance, but they will not be bound by it.

## STARTING A CLAIM

### 8. Presenting the claim

(1) A claim must be started by presenting a completed claim form (using the prescribed form) to a tribunal office.

(2) A claim may be presented to a tribunal office in England and Wales if—

- (a) the respondent, or one of the respondents, resides or carries on business in England and Wales; or
- (b) one or more of the acts or omissions complained of took place in England and Wales; or
- (c) where neither (a) nor (b) applies, the connection with Great Britain by virtue of which the claimant is entitled to present the claim is at least partly a connection with England and Wales.

(3) A claim may be presented to a tribunal office in Scotland if—

- (d) the respondent, or one of the respondents, resides or carries on business in Scotland; or
- (e) one or more of the acts or omissions complained of took place in Scotland; or
- (f) the connection with Great Britain by virtue of which the claimant is entitled to present the claim is at least partly a connection with Scotland.

9. **Multiple claimants.** Two or more claimants can make their claims on the same claim form if their claims are based on the same set of facts, or if it is otherwise reasonable for their claims to be made on a single form.

10. **Rejection: form not used or failure to supply minimum information.** The staff of the tribunal office will reject a claim if—
- (a) it is not made on a prescribed form; or
  - (b) it does not contain all of the following information—
    - (i) each claimant's name;
    - (ii) each claimant's address;
    - (iii) the name of each respondent; and
    - (iv) each respondent's address.

The form will be returned to the claimant with a notice of rejection explaining why it has been rejected. The notice should also contain information about how to apply for a reconsideration.

11. **Rejection: substantive defects.** A claim, or part of it, will also be rejected if an Employment Judge to whom the claim form has been referred by the staff of the tribunal office considers that the claim or part of it—
- (a) is one which the Tribunal has no jurisdiction to consider; or
  - (b) is in a form which cannot sensibly be responded to or is otherwise an abuse of the process.

The form will be returned to the claimant together with a notice of rejection giving the Judge's reasons for deciding that the claim, or part of it, should be rejected and enclosing a fresh claim form. The notice should also contain information about how to apply for a reconsideration.

12. **Reconsideration of rejection.** A claimant whose claim has been rejected (in whole or in part) under rule 10 or rule 11 may apply for a reconsideration on the basis that the decision to reject was wrong. The application must be in writing and presented to the Tribunal within 14 days of the date that the notice of rejection was sent. The application must explain why the decision is said to have been wrong and state whether the claimant requests a hearing. If the claimant does not request a hearing, or the Employment Judge decides, on considering the application, that the claim should be accepted in full, the Employment Judge will determine the application without a hearing.

13. **Protected disclosure claims: notification to the regulator.** If the claim alleges that the claimant has made a protected disclosure, the Tribunal may, with the consent of the claimant, send a copy of any accepted claim, or part of it, to a regulator. (A regulator means a person listed in Schedule 1 to the Public Interest Disclosure (Prescribed Persons) Order 1999; and a protected disclosure has the meaning given by section 43A of the Employment Rights Act 1996.)

## THE RESPONSE TO THE CLAIM

14. **Sending claim form to respondents.** Unless a claim is rejected, the Tribunal will send a copy of the claim form, together with a prescribed response form, to each respondent with a notice which includes information on—
- (a) whether any part of the claim has been rejected;
  - (b) how to submit a response to the claim, the time limit which applies for doing so and what may happen if a response is not received by the Tribunal within that time limit.
15. **Response.** The respondent's response must be on the prescribed form and must be presented to the tribunal office within 28 days of the date that the copy of the claim form was sent by the Tribunal.
16. **Rejection: form not used or failure to supply minimum information.** The staff of the tribunal office will reject a response if—
- (a) it is not made on the prescribed form; or
  - (b) it does not contain all of the following information:
    - (i) the respondent's full name;
    - (ii) the respondent's address; and
    - (iii) whether the respondent wishes to resist any part of the claim.

The form will be returned to the respondent with a notice of rejection explaining why it has been rejected and enclosing a fresh response form. The notice should explain what steps may be taken by the respondent, including the need (if appropriate) to apply for an extension of time, and how to apply for a reconsideration.

17. **Rejection: form presented late.** A response will also be rejected if it is received outside the time limit in rule 15 (or any extension of that limit granted within the original limit) unless it includes or is accompanied by an application for an extension (in which case the response will not be rejected pending the outcome of the application). The response will be returned to the respondent together with a notice of rejection explaining that the response has been presented late. The notice should explain—
- (a) how the respondent can apply for an extension of time;
  - (b) how to apply for a reconsideration if the respondent contends that the response was in fact within time.
18. **Reconsideration of rejection.** A respondent whose response has been rejected under rule 16 or rule 17 may apply for a reconsideration on the basis that the decision to reject was wrong. The application must be in writing and presented within 14 days of the date that the notice of rejection was sent. The application must explain why the decision is said to have been wrong and state whether the respondent requests a hearing. If the respondent does not request a hearing, or the Employment Judge decides, on considering the application, that the response should be accepted, the Judge will determine the application without a hearing.
19. **Applications for extension of time for presenting response.** An application for an extension of time for presenting a response must be presented in writing and copied to the claimant. It must set out the reason why the extension is sought and must, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible and state whether the respondent requests a hearing. The claimant may within seven days of receipt of the application present a reply to the application and may request a hearing. If none of the parties requests a hearing the Employment Judge may determine the application without a hearing. If the decision is to refuse an extension any prior rejection of the response will stand. If the decision is to allow an extension any judgment issued under rule 20 will be set aside.
20. **Effect of non-presentation or rejection of response/case not contested.** Where on the expiry of the time limit in rule 15 no response has been presented, or any response received has been rejected, and no application for a reconsideration is outstanding or where the respondent has stated that no part of the claim is contested—

- (a) An Employment Judge will decide whether on the available material (which may include further information which the parties are required by the Judge to provide), a determination can properly be made on the claim, or part of it. To the extent that it can the Judge will issue a judgment accordingly. Otherwise, a hearing will be fixed before an Employment Judge alone;
- (b) The respondent will be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, will only be entitled to participate in any hearing to the extent permitted by the Employment Judge.

21. **Notification of acceptance.** Where the Tribunal accepts the response it shall send a copy of it to all other parties.

## INITIAL CONSIDERATION OF CLAIM FORM AND RESPONSE

22. **Consideration of the file.** As soon as possible after the acceptance of the response, the file will be considered by an Employment Judge, with a view to confirming that there are arguable complaints and defences within the jurisdiction of the Tribunal; and, if so, to giving case management directions. For that purpose the Judge may require any party to provide further information.

23. **Dismissal of claim (or part)**

(1) If the Employment Judge considers either that the Tribunal has no jurisdiction to consider the claim, or part of it, or that the claim, or part of it, has no reasonable prospect of success, the Tribunal will send a notice to the claimant—

- (a) setting out the Judge's view and the reasons for it; and
- (b) ordering that the claim, or the part in question, will stand dismissed on such date as is specified in the notice unless before that date the claimant has presented a written request for a hearing.

(2) If no request for a hearing is received, the claim will stand dismissed from the date specified without further order (although the Tribunal will write to the parties to confirm what has occurred). If such a request is received within the specified time a hearing will be fixed for the purpose of deciding whether the claim, or part of it, should be permitted

to proceed. The respondent may, but need not, attend and participate in the hearing. If any part of the claim is permitted to proceed the Employment Judge will give case management directions.

#### 24. **Dismissal of response.**

(1) If the Employment Judge considers that the response to the claim, or part of it, has no reasonable prospect of success the Tribunal will send a notice to the respondent—

- (a) setting out the Judge's view and the reasons for it;
- (b) ordering that the response, or the relevant part of it, will stand dismissed with effect from the date specified unless before that date the respondent presents a written request for a hearing; and
- (c) specifying the consequences of the dismissal of the response, in accordance with (3) below.

(2) If no request for a hearing is received, the response will stand dismissed from the date specified without further order (although the Tribunal will write to confirm what has occurred). If such a request is received within the specified time, a hearing will be fixed for the purpose of deciding whether the response, or any part of it, has a reasonable prospect of success. The claimant may, but need not, attend and participate in the hearing. If any part of the response is permitted to proceed the Employment Judge will give case management directions.

(3) Where a response is dismissed, the consequences will be as if no response had been presented, as set out in rule 20 above.

25. **Case management directions.** Except in a case where notice is given under rule 23 or 24, the Employment Judge conducting the initial consideration will give written case management directions, which may include directions for the listing of a preliminary or final hearing, and/or propose judicial mediation or other forms of dispute resolution.

## **CASE MANAGEMENT DIRECTIONS AND OTHER POWERS**

26. **General rule.** The Tribunal may at any stage of the proceedings, on its own initiative, or on application, give case management directions, including directions varying, suspending or setting aside an earlier direction. The particular powers identified in the following rules do not restrict that general power. If a direction is made without a hearing, or at a hearing at which a party was not present, an affected party can apply, within 14 days of the date that notice of the direction was sent, for it to be varied or revoked.
27. **Disclosure of documents and information.** The Tribunal may order any person to disclose documents or information to a party or to allow a party to inspect such material (by providing copies or otherwise) as might be ordered by a county court (or, in Scotland, by a sheriff).
28. **Requirement to attend to give evidence.** The Tribunal may order any person to attend to give evidence and produce documents at a hearing.
29. **Addition, substitution and removal of parties.** The Tribunal may on its own initiative, or on the application of a party or any other person, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included.
30. **Other persons.** The Tribunal may permit any person to participate in proceedings, on such terms as may be specified, in respect of any matter in which that person has a legitimate interest.
31. **Lead cases**
- (1) Where two or more claims pending before the Tribunal give rise to common or related issues of fact or law, the Tribunal or the President may give a direction specifying one or more of those claims as a lead case or lead cases and staying (in Scotland, sisting) the other claims (“the related cases”).

(2) When the Tribunal makes a decision in respect of the common or related issues it must send a copy of that decision to each party in each of the related cases and, subject to paragraph (3), that decision shall be binding on each of those parties.

(3) Within 28 days after the date on which the Tribunal sent a copy of the decision to a party under paragraph (2), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related case.

(4) If the lead case or cases are withdrawn before the Tribunal makes a decision in respect of the common or related issues, it must give directions as to—

- (a) whether another claim or other claims are to be specified as a lead case or lead cases; and
- (b) whether any direction affecting the related cases should be set aside or varied.

32. **Applications for case management directions.** An application by a party for particular case management directions may be made either at a hearing or by writing to the Tribunal. The Tribunal may deal with such an application in writing or direct that it be dealt with at a preliminary or final hearing.

33. **Correspondence with the Tribunal: copying to other parties.** The general rule is that whenever any party sends any communication to the Tribunal (except an application under rule 28) it must send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise). The Tribunal may permit a departure from this rule where it considers it in the interests of justice to do so.

#### 34. **Striking out**

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out (i.e. dismiss) all or part of any claim or response on any of the following grounds—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) 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;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal (including a deposit order under rule 36);

- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing of the claim or response (or the part struck out).

(2) A claim or response may not be struck out unless the party in question has been given the opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the consequences will be as if no response had been presented, as set out in rule 20 above.

35. **Unless orders.** An order may be made in terms that specify that if it is not complied with by the date specified the claim or response, or part of it, will stand dismissed without further order. If a claim or response is dismissed on this basis the Tribunal will give written notice to the parties confirming what has occurred. A party whose claim or response has been dismissed as a result of such an order may apply to the Tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing the Tribunal may determine it on the basis of written representations. Where a response is dismissed under this rule, the consequences will be as if no response had been presented, as set out in rule 20.

### 36. **Deposit orders**

(1) If at a preliminary hearing the Tribunal considers that any complaint has little reasonable prospect of success, it may make an order requiring that party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that complaint.

(2) The Tribunal must make reasonable enquiries into the paying party's financial means to pay the deposit and must take any such information into account in deciding the amount of the deposit.

(3) The deposit must be paid within 21 days of written notice of the deposit order being sent to the parties. The written notice must contain the reasons for making a deposit order and include a warning about the potential consequences for the paying party.

(4) If the paying party fails to pay the deposit within the relevant time period the complaint to which the deposit order relates will be struck out. Where a response is struck out, the consequences will be as if no response had been presented, as set out in rule 20.

(5) If the Tribunal at any stage following the making of a deposit order decides the complaint against the paying party for substantially the reasons given in the deposit order—

- (a) the paying party will be treated as having acted unreasonably in pursuing that complaint for the purpose of rule 70, unless the contrary is shown; and
- (b) the deposit shall be paid to the other party (or, if more than one, to such other party as the Tribunal directs); if an award of costs or for preparation time has been made in favour of that party, the amount of the deposit shall count against that liability.

Otherwise the deposit will be refunded.

## WITHDRAWAL

37. **Where a claimant informs the Tribunal**, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, thereupon comes to an end, subject to any application that the respondent may make for a costs, preparation time or a wasted costs order.

38. **Where a claim, or part of it, has been withdrawn under rule 37**, the Tribunal will normally issue a judgment formally dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint or complaints) unless (a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and (b) the Tribunal is satisfied that there would be a legitimate reason for doing so.

## PRELIMINARY HEARINGS

39. **Scope of preliminary hearings.** A preliminary hearing is a hearing at which the Tribunal will do one or more of the following—
- (a) conduct a preliminary consideration of the claim with the parties and make case management directions (including directions relating to the conduct of the final hearing);
  - (b) determine any preliminary issue – that is, as regards any complaint, any substantive issue which will not necessarily determine liability (for example, an issue as to jurisdiction or as to whether an employee was dismissed);
  - (c) consider whether a claim or response, or any part, should be struck out under rule 34;
  - (d) make a deposit order under rule 36;
  - (e) explore the possibility of settlement or alternative dispute resolution (including judicial mediation).

There may be more than one preliminary hearing in any case.

40. **Fixing of preliminary hearings.** A preliminary hearing may be directed by the Tribunal on its own initiative following its initial consideration or at any time thereafter or as the result of an application by a party. Parties will be given reasonable notice of the date of the hearing and the notice will specify any preliminary issues (as defined in rule 39(b)) that will or may be decided at the hearing.
41. **Constitution of tribunal for preliminary hearings.** Preliminary hearings will be conducted by an Employment Judge alone unless a party has, at least ten days prior to the hearing, presented a written request that the hearing be conducted by a full tribunal and a Judge has determined that it would be desirable for that to be the case.
42. **When preliminary hearings will be in public.** Preliminary hearings shall be conducted in private, except that where the hearing involves issues of the kind identified at rule 39 (b) and (c), any part of the hearing relating to such an issue must be in public (subject to rule 55) and the Tribunal may direct that the entirety of the hearing be in public. A representative of Acas may attend the hearing.

## FINAL HEARING

43. **Scope of final hearing.** A final hearing is a hearing at which the Tribunal will determine the claim or such parts as remain outstanding follow the initial consideration or any preliminary hearing. There may be different final hearings for different issues (for example, as between liability and remedy or for costs).
44. **Notice of final hearing.** The parties will be given not less than 14 days' notice of the date of the final hearing.
45. **Composition of Tribunal for final hearing.** Whether the Tribunal at a final hearing will consist of full tribunal or an Employment Judge alone will depend on section 4 of the Employment Tribunals Act 1996 (see Annex 1).
46. **When final hearing will be in public.** Any final hearing shall be in public, subject to rule 55.

## RULES COMMON TO ALL KINDS OF HEARING

47. **General.** The Tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The particular powers identified in the following rules do not restrict that general power. The Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence. It shall not be bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.
48. **Written representations.** The Tribunal will consider written representations from a party who does not propose to attend the hearing if they are delivered not less than seven days before the hearing (and sent to all the other parties).
49. **Witnesses.** Where a witness is called to give oral evidence, any witness statement of that person shall stand as that witness's evidence in chief unless the Tribunal orders otherwise. Witnesses will be required to give their evidence on oath or affirmation. 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.

50. **Timetabling.** A Tribunal may impose limits on the time that a party may take in presenting evidence, or in questioning witnesses or in the presentation of submissions, and may prevent the party from proceeding beyond any time so allotted.
51. **Hearings by electronic communication.** A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the Tribunal considers that to do so will not prejudice the fairness of the hearing and provided that members of the public present at the hearing are able to hear what the Tribunal hears and see what the Tribunal sees.
52. **Non-attendance.** If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party (as the case may be). Before doing so, however, it shall consider any information which is available to it, or which can be obtained by any enquiries that may be practicable, about the reasons for the party's absence.
53. **Conversion from preliminary hearing to final hearing and vice versa.** A Tribunal conducting a preliminary hearing may direct that it be treated as a final hearing, or vice versa, if the Tribunal is properly constituted for the purpose and if it is satisfied that neither party will be substantially prejudiced by the change.
54. **Majority decisions.** Where a Tribunal is composed of three persons any decision may be made by a majority. If it is composed of two persons only, the Employment Judge has a second or casting vote.
55. **Privacy and restrictions on disclosure**

(1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make orders with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act 1996 (set out in Annex 1).

(2) Such orders may include—

- (a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;
- (b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;
- (c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;
- (d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act 1996 (set out in Annex 1);
- (e) an order having similar effect to such a restricted reporting order but made in circumstances other than those identified in those sections and/or extending beyond the date of promulgation of the decision of the Tribunal, either indefinitely or to such date as the Tribunal may specify.

(3) Before making any such order the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(4) Any party, or other person with a legitimate interest, who has not had the opportunity to make representations before an order under this rule is made may apply in writing for it to be revoked or discharged, either on the basis of written representations or, if required, at a hearing.

(5) Where an order is made under paragraph (2) (d) or (e) above—

- (a) it must specify the persons whose identity is protected; and may (but need not) specify particular identifying matter whose publication is prohibited as likely to lead to their identification;
- (b) it must specify the duration of the order;
- (c) the Tribunal must ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on

- the door of the room in which the proceedings affected by the order are taking place;
- (d) the Tribunal may direct that the order applies also to any other proceedings being heard at the same time.

## DECISIONS AND REASONS

56. **Decisions made without a hearing.** Decisions made without a hearing will be communicated in writing to the parties, identifying the Employment Judge who has made the decision.

57. **Decisions made at or following a hearing.** Where there is a hearing the Tribunal may either announce its decision in relation to any issue at the hearing or reserve it to be sent to the parties later in writing. If the decision is announced at the hearing, a written record (in the form of a judgment if appropriate) will be provided to the parties (and, where the proceedings were referred to the tribunal by a court, to that court) as soon as possible; but it will be effective as soon as announced. The record will be signed by the Employment Judge. If that is impossible as a result of death, incapacity or absence, the record will be signed by the other member or members (in the case of a full tribunal) or by the Regional Employment Judge, President or Vice President (in the case of a judge sitting alone).

### 58. **Reasons**

(1) The Tribunal will give reasons for its decision on any disputed issue, whether substantive or procedural, (including any decision on an application for reconsideration or for orders for costs, preparation time or wasted costs).

(2) In the case of a decision given in writing the reasons also will be given in writing. In the case of a decision announced at a hearing the reasons may be given orally at the hearing or reserved to be given in writing later (which may, but need not, be as part of the written record of the decision provided to the parties). Written reasons will be signed by the Employment Judge (except where that is not possible, in which case the relevant provisions of rule 57 will apply).

(3) Where reasons have been given orally the Employment Judge may announce that written reasons will not be provided unless they are asked for by any party at the hearing itself or by a written request presented by any party within 14 days of the sending of the written record of the decision. The written record of the decision will repeat that information. If no such request is received the Tribunal will only be obliged to provide written reasons if so requested by the Employment Appeal Tribunal or a Court.

(4) The reasons given for any decision other than a judgment should be proportionate to the significance of the issue and in appropriate cases may be very short.

(5) In the case of a judgment the reasons should (though not necessarily in this order): identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues. Where the judgment includes a financial award the reasons should identify, by means of a table or otherwise, how the amount to be paid has been calculated.

59. **Consent orders and judgments.** If the parties agree in writing upon the terms of any order or judgment a Tribunal may, if it thinks fit, make such order or judgment, in which case it will be identified as having been made by consent.

60. **The Register.** Subject to rule 55, a copy shall be entered in the Register of any judgment and of the written reasons for any judgment issued separately.
61. **Copies of judgment for referring court.** Where the proceedings were referred to the Tribunal by a court a copy of any judgment and written reasons (where issued separately) shall be provided to that court.
62. **Correction of clerical mistakes and accidental slips.** An Employment Judge may at any time correct any clerical mistake or other accidental slip or omission in any direction, judgment or other document produced by a Tribunal. If such a correction is made, any published version of the document will also be corrected. If any document is amended under this rule a copy of the amended version will be sent to all of the parties.

## RECONSIDERATION OF DECISIONS

63. **Principles.** A Tribunal can, either on its own initiative or on the application of a party, reconsider any decision where it is in the interests of justice to do so. On reconsideration the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it can be taken again.
64. **Application.** Except where an application for reconsideration is made in the course of a hearing, it must be presented in writing (and copied to all the other parties). The application must be made within 14 days of the date on which the original decision, or the written record of it, was sent to the parties, except that where a request for written reasons has been made in accordance with rule 58 (3) an application may be made within 14 days from when the reasons were sent. The application must set out why the original decision is said to be wrong.
65. **Process**

(1) Stage 1. There will be an initial consideration of the application by an Employment Judge. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, absent special reasons, where substantially the same application has already been made and refused), the application will be refused. Otherwise the Tribunal will send a notice to the parties (a) setting a time limit

for any response to the application by the other parties and (b) seeking the views of all parties on whether the application can be determined without a hearing. The notice may, but need not, set out the Judge's provisional views on the application.

(2) **Stage 2.** If the application has not been refused at stage 1, the original decision will be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice under (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties will be given an opportunity to make further written representations.

(3) Where practicable, the consideration at stage 1 will be by the Employment Judge who made the original decision or, as the case may be, chaired the Tribunal which made it; and any reconsideration at stage 2 will be made by the Employment Judge or, as the case may be, the full Tribunal which made the original decision. Where that is not practicable the President, Vice President or Regional Employment Judge will appoint another Employment Judge or, in the case of the decision of a full tribunal, will either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

65. **Reconsideration by the Tribunal on its own initiative.** Where the Tribunal proposes to reconsider a decision on its own initiative all parties will be informed of the reasons why the decision is being reconsidered and will be given the opportunity to make written representations or to attend a hearing in accordance with stage 2 of the procedure set out in rule 65.

## EMPLOYER'S CONTRACT CLAIMS

66. **Making an employer's contract claim.** An employer's contract claim must be made as part of the response, presented in accordance with rule 16, to a claim which includes an employee's contract claim and within the 28-day time limit there prescribed. An employer's contract claim may be rejected on the same basis as a claimant's claim may be rejected under rule 11, in which case rule 12 will apply.

67. **Notification of employer's contract claim.** When the Tribunal sends the response to the other parties in accordance with rule 21 it will notify the original claimant that the

response includes an employer's contract claim, setting out how to submit a response to the claim, the time limit for doing so and what may happen if a response is not received by the Tribunal within that time limit.

68. **Responding to an employer's contract claim.** A claimant's response to an employer's contract claim must be presented to the tribunal office within 28 days of the date that the response was sent to the claimant. If no response is presented within that time limit, rules 19 and 20 will apply.

## **COSTS ORDERS AND PREPARATION TIME ORDERS**

### 69. **Costs orders and preparation time orders**

(1) A costs order is an order that a party ("the paying party") make a payment to another party ("the receiving party") in respect of the receiving party's costs incurred while legally represented. "Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing). "Legally represented" means having the assistance of a person (including where that person is the receiving party's employee) who—

- (a) has a right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales, or all proceedings in county courts or magistrates' courts;
- (b) is an advocate or solicitor in Scotland; or
- (c) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

In Scotland all references to costs (except when used in the expression "wasted costs") shall be read as references to expenses.

(2) A preparation time order is an order that a party ("the paying party") make a payment to another party ("the receiving party") in respect of that party's preparation time while not legally represented. "Preparation time" means time spent by the receiving party

(including by any employees or advisers) in working on the case except for time spent at any final hearing.

(3) A costs order and a preparation time order may not be made in favour of the same party in the same proceedings. A Tribunal may, if it wishes, decide in the course of the proceedings that a party is entitled to one order or the other but defer until a later stage in the proceedings deciding which kind of order to make.

#### 70. **When a costs order or a preparation time order may or must be made.**

(1) A Tribunal may make a costs order or a preparation time order, and must consider whether to do so, where it considers that—

- (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted, or
- (b) any claim made in the proceedings by a party had no reasonable prospect of success.

It may also make such an order where a party has been in breach of any order or practice direction.

(2) A Tribunal must make such an order against a respondent where in proceedings for unfair dismissal a final 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 seven 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.

71. **Procedure.** A party can apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings as against that party (being the determination of remedy where it arises) was sent to the parties. No such order shall be made unless the paying party has had a reasonable

opportunity to make representations (in writing or at a hearing, as the Tribunal may direct) in response to the application.

72. **The amount of a costs order.** A costs order may either—

- (a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party; or
- (b) 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, in England and Wales, by way of detailed assessment carried out either (i) by a county court in accordance with the Civil Procedure Rules 1998 or (ii) by an Employment Judge applying the same principles; or, in Scotland by way of taxation according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the Tribunal and in accordance with any directions given by the Tribunal as to modification or uplift.

If the paying party and the receiving party agree as to the amount payable an order may be made in that amount.

73. **The amount of a preparation time order.** The amount of a preparation time order shall be calculated as follows—

(1) The Tribunal shall assess the number of hours in respect of which payment should be made, on the basis of—

- (a) information provided by the receiving party on time spent falling within rule 69 (2) above; and
- (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.

(2) An hourly rate shall be applied to that figure. The rate at the date that these Rules are made is £31, but as from each 6 April that rate shall be increased by £1.

(3) The amount payable shall be the product of the number of hours assessed under (1) and the rate in accordance with (2).

74. **Allowances.** Where the Tribunal makes a costs order or preparation time order, it may also make an order that 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 1996 to any person for the purposes of, or in connection with, that person's attendance at the Tribunal.

75. **Paying party's ability to pay.** In deciding whether to make a costs order, a preparation time order, or an order under rule 74, and if so in what amount, the Tribunal may have regard to the paying party's ability to pay.

## PERSONAL LIABILITY OF REPRESENTATIVE FOR COSTS

### 76. **When a wasted costs order may be made**

(1) A tribunal may make a wasted costs order against a representative in favour of any party ("the receiving party") where that party has incurred costs (as defined in rule 69 (1))—

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of the 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 the receiving party to pay.

Costs so incurred are described as "wasted costs".

(2) "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 acting on a conditional fee arrangement is considered to be acting in pursuit of profit.

(3) A wasted costs order may be made in favour of a party whether or not that party is legally represented and 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.

77. **Effect of a wasted costs order.** A wasted costs order may—

- (a) order the representative to pay the whole or part of any wasted costs of the receiving party, or disallow any wasted costs otherwise payable to the representative, 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 any conduct by the representative falling within the terms of rule 76 (1) (a).

The amount to be paid, repaid or disallowed must in each case be specified in the order.

78. **Procedure.** A wasted costs order may be made by the tribunal on its own initiative or on the application of any party. A party can apply for a wasted costs order at any stage up to 28 days after the date on which the judgment finally determining the proceedings as against that party (being the determination of remedy where it arises) was sent to the parties. No such order shall be made unless the representative has had a reasonable opportunity to make representations (in writing or at a hearing, as the tribunal may direct) in response to the application or proposal. The tribunal shall inform the representative's client in writing of any proceedings under this rule and of any order made against the representative.

79. **Representative's ability to pay.** In deciding whether to make a wasted costs order, and if so in what amount, the tribunal may have regard to the representative's ability to pay.

## DELIVERY OF DOCUMENTS

80. **Deliver to the Tribunal.**

(1) Documents may be delivered to the Tribunal—

- (a) by being sent by post;
- (b) by direct delivery to the appropriate tribunal office (including delivery by a courier or messenger service); or
- (c) by electronic communication (such as fax or email).

(2) The parties will be notified following the presentation of the claim of the address of the tribunal office dealing with the case (including any fax or email or other electronic address), and all documents must be sent or delivered to either the postal or the electronic address so notified. The Tribunal may from time to time notify the party of any change or address, or direct that a particular form of communication should or should not be used, and any documents must be delivered in accordance with that notification or direction.

#### 81. **Delivery to parties.**

(1) Documents may be delivered to a party (whether by the Tribunal or by another party)—

- (a) by being sent by post;
- (b) by direct delivery to that party's address (including delivery by a courier or messenger service);
- (c) by electronic communication (such as fax or email); or
- (d) by being handed personally to that party, if an individual; or to the representative named in the claim form or response; or, on the occasion of a hearing, to any person identified by the party as representing that party at that hearing.

(2) In cases (a)-(c) the document must be sent or delivered to the address given in the claim form or response (which will be the address of the party's representative, if one is named), unless the party in question has subsequently notified the Tribunal and all other parties in writing of a different address.

(3) If a party has given both a postal address and one or more electronic addresses, any of them may be used unless the party has indicated in writing that a particular address should not be used.

82. **Delivery to non-parties.** Subject to the special cases which are the subject of rule 83, documents should be sent to non-parties at any address for service which they may have notified but otherwise at any known address or place of business in the United Kingdom or, if the party is a corporate body, at its registered or principal office in the United Kingdom (or, if permitted by either President, at an address outside the United Kingdom).
83. **Special cases.** Addresses for serving the Secretary of State, the Law Officers of the Crown, and the Counsel General to the Welsh Assembly Government, in cases where they are not parties, will be issued by Practice Direction from time to time.
84. **Substituted service.** In any case where no address for service in accordance with the above rules is known, or it appears that service at any such address is unlikely to come to the attention of the addressee, an Employment Judge may order that there shall be substituted service in such manner as appears appropriate.
85. **Date of delivery.** Where a document has been presented or sent or delivered in accordance with rules 80 or 81, it shall, unless the contrary is proved, be taken to have been received by the addressee—
- (a) if sent by post, on the day on which it would be delivered in the ordinary course of post;
  - (b) if sent by means of electronic communication, on the day of transmission;
  - (c) if delivered in person, on the day of delivery.
86. **Irregular service.** A Tribunal may treat any document as regularly delivered to a person, notwithstanding any non-compliance with the above rules, if satisfied that the document in question, or its substance, has in fact come to the attention of that person.

## **MISCELLANEOUS**

87. **National security proceedings**

*[TO FOLLOW]*

88. **Interim relief proceedings.** When a Tribunal hears an application for interim relief (or for its variation or revocation) under section 161 or section 165 of Trade Union and Labour Relations (Consolidation) Act 1992 or under section 128 or section 131 of the Employment Rights Act 1996 it will not hear oral evidence unless it directs otherwise.

89. **Proceedings involving the National Insurance Fund.** The Secretary of State shall be entitled to appear and be heard at any hearing in relation to proceedings which may involve a payment out of the National Insurance Fund and shall be treated as a party for the purposes of these Rules.

90. **Collective agreements.** Where a claim includes a complaint under section 146 (1) of the Equality Act 2010 so far as relating to sex, gender reassignment, marriage and civil partnership or pregnancy and maternity 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—

- (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 an Employment Judge, to negotiate the variation;

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

91. **Devolution issues**

(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, notice shall as soon as reasonably practicable be given by the Tribunal to the Advocate General for Scotland and the Lord Advocate (unless they are a party to the proceedings), with a copy of the claim and the response and shall at the same time send a copy of the

notice to the parties.

(2) In any proceedings in which a devolution issue within the definition of the term in paragraph 1 of Schedule 9 to the Government of Wales Act 2006 arises, notice shall as soon as reasonably practicable be given by the Tribunal to the Attorney General and the Counsel General to the Welsh Assembly Government (unless they are a party to the proceedings), with a copy of the claim and the response and shall at the same time send a copy of the notice to the parties.

(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 tribunal, take part as a party in the proceedings, so far as they relate to the devolution issue. The Tribunal shall send a copy of the notice to the other parties.

#### 92. **Transfer of proceedings between Scotland and England & Wales**

(1) The President (England and Wales) or a Regional Employment Judge may at any time, on their own initiative or on the application of a party, with the consent of the President (Scotland) or the Vice-President, transfer to a tribunal office in Scotland any proceedings started in England and Wales which could (in accordance with rule 8 (3)) have been started in Scotland and which in their opinion would more conveniently be determined there.

(2) The President (Scotland) or the Vice-President may at any time, on their own initiative or on the application of a party, with the consent of the President (England and Wales), transfer to an tribunal office in England or Wales any proceedings started in Scotland which could (in accordance with rule 8 (2)) have been started in England or Wales and in their opinion would more conveniently be determined there.

93. **References to the European Court of Justice.** Where a Tribunal decides to refer a question to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union, a copy of that decision must be sent to the Registrar of that Court.

94. **Transfer of proceedings from a court.** Where proceedings are referred to a Tribunal

by a court, these Rules shall apply to them as if the proceedings had been presented by the claimant.

95. **Vexatious litigants.** The Tribunal may provide any information or documents requested by the Attorney General, the Solicitor General or the Lord Advocate for the purpose of preparing an application or considering whether to make an application under section 42 of the Supreme Court Act 1981, section 1 of the Vexatious Actions (Scotland) Act 1898 or section 33 of the Employment Tribunals Act 1996.

96. **Information to Equality and Human Rights Commission.** The Tribunal shall send to the Equality and Human Rights Commission copies of all judgments and written reasons relating to complaints under section 120, 127 or 146 of the Equality Act 2010. That obligation shall not apply in any proceedings where a Minister of the Crown has given a direction, or a Tribunal has made an order, under rule 87 in those proceedings; and either the Security Service, the Secret Intelligence Service or the Government Communications Headquarters is a party to the proceedings.

97. **Application of this Schedule to levy appeals.** For the purposes of a levy appeal, this Schedule shall be treated as modified in the following ways—

- (a) References in this Schedule 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 content may require.
- (b) The following rules shall not apply in relation to levy appeals; 20, 36, 63.

98. **Application of this Schedule to appeals against improvement and prohibition notices under the Health and Safety Act**

(1) A notice of appeal must be presented to a tribunal office—

- (a) within 21 days from the date of the service on the appellant of the notice which is the subject of the appeal, or
- (b) within such further period as the Tribunal considers reasonable where it is satisfied that it was not reasonably practicable for an appeal to be presented within that time.

(2) For the purposes of an appeal against an improvement notice or a prohibition notice, this Schedule shall be treated as modified in the following ways—

- (a) References to a claim or claimant shall be read as references to an appeal or to an appellant in an appeal respectively and as the content may require.
- (b) References to a respondent shall be read as references to the inspector who issued the notice which is the subject of the appeal.
- (c) A notice of appeal must include the date of the improvement notice or prohibition notice which is the subject of the appeal, the address of the premises or the place concerned and details of the requirements or directions which are being appealed.
- (d) The following rules shall not apply in relation to appeals against an improvement notice or a prohibition notice; 20, 36.

99. **Application of this Schedule to appeals against unlawful act notices.** For the purposes of an appeal against an unlawful act notice, this schedule shall be treated as modified in the following ways:

- (a) References in this Schedule 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 content may require.
- (b) References to a respondent shall be read as references to the Commission for Equality and Human Rights established under section 1 of the Equality Act 2006.
- (c) A notice of appeal must include the date of the unlawful act notice which is the subject of the appeal and details of the requirements which are being appealed.
- (d) The following rules shall not apply in relation to appeals against an unlawful act notice; 20, 36.

# Annex 1

## Selected provisions of the Employment Tribunals Act 1996

### 4.— Composition of a tribunal.

(1) Subject to the following provisions of this section and to section 7(3A), proceedings before an employment tribunal shall be heard by—

- (a) the person who in accordance with regulations made under section 1(1), is the chairman, and
- (b) two other members, or (with the consent of the parties) one other member, selected as the other members (or member) in accordance with regulations so made.

(2) Subject to subsection (5), the proceedings specified in subsection (3) shall be heard by the person mentioned in subsection (1)(a) alone or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal.

(3) The proceedings referred to in subsection (2) are—

(a) proceedings on a complaint under section 68A, 87 or 192 of the Trade Union and Labour Relations (Consolidation) Act 1992 or on an application under section 161, 165 or 166 of that Act.

(b) proceedings on a complaint under section 126 of the Pension Schemes Act 1993.

(c) proceedings on a reference under section 11, 163 or 170 of the Employment Rights Act 1996, on a complaint under section 23, 34, 111 or 188 of that Act, on a complaint under section 70(1) of that Act relating to section 64 of that Act, on an application under section 128, 131 or 132 of that Act or for an appointment under section 206(4) of that Act,

(ca) proceedings on a complaint under regulation 15(10) of the Transfer of Undertakings (Protection of Employment) Regulations 2006,

(cc) proceedings on a complaint under section 11 of the National Minimum Wage Act 1998;

(cd) proceedings on an appeal under section 19C of the National Minimum Wage Act 1998;

(ce) proceedings on a complaint under regulation 30 of the Working Time Regulations 1998 relating to an amount due under regulation 14(2) or 16(1) of those Regulations,

(cf) proceedings on a complaint under regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 relating to an amount due

under regulation 11 of those Regulations,

(cg) proceedings on a complaint under regulation 18 of the Civil Aviation (Working Time) Regulations 2004 relating to an amount due under regulation 4 of those Regulations,

(ch) proceedings on a complaint under regulation 19 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 relating to an amount due under regulation 11 of those Regulations,

(d) proceedings in respect of which an employment tribunal has jurisdiction by virtue of section 3 of this Act,

(e) proceedings in which the parties have given their written consent to the proceedings being heard in accordance with subsection (2) (whether or not they have subsequently withdrawn it), and

(g) proceedings in which the person (or, where more than one, each of the persons) against whom the proceedings are brought does not, or has ceased to, contest the case.

(4) The Secretary of State and the Lord Chancellor, acting jointly, may by order amend the provisions of subsection (3).

(5) Proceedings specified in subsection (3) shall be heard in accordance with subsection (1) if a person who, in accordance with regulations made under section 1(1), may be the chairman of an employment tribunal, having regard to—

(a) whether there is a likelihood of a dispute arising on the facts which makes it desirable for the proceedings to be heard in accordance with subsection (1),

(b) whether there is a likelihood of an issue of law arising which would make it desirable for the proceedings to be heard in accordance with subsection (2),

(c) any views of any of the parties as to whether or not the proceedings ought to be heard in accordance with either of those subsections, and

(d) whether there are other proceedings which might be heard concurrently but which are not proceedings specified in subsection (3),

decides at any stage of the proceedings that the proceedings are to be heard in accordance with subsection (1),

(6) Where (in accordance with the following provisions of this Part) the Secretary of State makes employment tribunal procedure regulations, the regulations may provide that any act which is required or authorised by the regulations to be done by an employment tribunal and is of a description specified by the regulations for the purposes of this subsection may be done by the person mentioned in subsection (1)(a) alone or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal.

(6A) Subsection (6) in particular enables employment tribunal procedure regulations to provide that—

(a) the determination of proceedings in accordance with regulations under section 7(3A), (3B) or (3C)(a),

(b) the carrying-out of pre-hearing reviews in accordance with regulations under subsection (1) of section 9 (including the exercise of powers in connection with such reviews in accordance with regulations under paragraph (b) of that subsection), or

(c) the hearing and determination of a preliminary issue in accordance with regulations under section 9(4) (where it involves hearing witnesses other than the parties or their representatives as well as where, in accordance with regulations under section 7(3C)(b), it does not),

may be done by the person mentioned in subsection (1)(a) alone or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal.

(6B) Employment tribunal procedure regulations may (subject to subsection (6C)) also provide that any act which—

(a) by virtue of subsection (6) may be done by the person mentioned in subsection (1)(a) alone or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal, and

(b) is of a description specified by the regulations for the purposes of this subsection,

may be done by a person appointed as a legal officer in accordance with regulations under section 1(1); and any act so done shall be treated as done by an employment tribunal.

(6C) But regulations under subsection (6B) may not specify—

(a) the determination of any proceedings, other than proceedings in which the parties have agreed the terms of the determination or in which the person bringing the proceedings has given notice of the withdrawal of the case, or

(b) the carrying-out of pre-hearing reviews in accordance with regulations under section 9(1).

#### **10A.— Confidential information.**

(1) Employment tribunal procedure regulations may enable an employment tribunal to sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

(a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any enactment,

(b) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or

(c) information 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 the Trade Union and Labour Relations (Consolidation) Act 1992, cause substantial injury to any undertaking of his or in which he works.

(2) The reference in subsection (1)(c) to any undertaking of a person or in which he works shall be construed—

(a) in relation to a person in Crown employment, as a reference to the national interest,

(b) in relation to a person who is a relevant member of the House of Lords staff, as a reference to the national interest or (if the case so requires) the interests of the House of Lords, and

(c) in relation to a person who is a relevant member of the House of Commons staff, as a reference to the national interest or (if the case so requires) the interests of the House of Commons.

## 11.— Restriction of publicity in cases involving sexual misconduct.

(1) Employment tribunal procedure regulations may include provision—

(a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation, and

(b) for cases involving allegations of sexual misconduct, enabling an employment tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

(2) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order—

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

(b) in the case of publication in any other form, the person publishing the matter, and

(c) in the case of matter included in a relevant programme—

(i) any body corporate engaged in providing the service in which the programme is included, and

(ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where a person is charged with an offence under subsection (2) it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of or included the matter in question.

(4) Where an offence under subsection (2) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in any such capacity,

he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In relation to a body corporate whose affairs are managed by its members “director”, in subsection (4), means a member of the body corporate.

(6) In this section—

“identifying matter”, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation,

“relevant programme” has the same meaning as in the Sexual Offences (Amendment) Act 1992,

“restricted reporting order” means an order—

(a) made in exercise of a power conferred by regulations made by virtue of this section, and

(b) prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain,

“sexual misconduct” means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed,

“sexual offence” means any offence to which section 4 of the Sexual Offences (Amendment) Act 1976, the Sexual Offences (Amendment) Act 1992 or section 274(2) of the Criminal Procedure (Scotland) Act 1995 applies (offences under the Sexual Offences Act 1956, Part I of the Criminal Law (Consolidation) (Scotland) Act 1995 and certain other enactments), and

“written publication” has the same meaning as in the Sexual Offences (Amendment) Act 1992.

## 12.— Restriction of publicity in disability cases.

(1) This section applies to proceedings on a complaint under section 120 of the Equality Act 2010, where the complaint relates to disability in which evidence of a personal nature is likely to be heard by the employment tribunal hearing the complaint.

(2) Employment tribunal procedure regulations may include provision in relation to proceedings to which this section applies for—

(a) enabling an employment tribunal, on the application of the complainant or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal, and

(b) where a restricted reporting order is made in relation to a complaint which is being dealt with by the tribunal together with any other proceedings, enabling the tribunal to direct that the order is to apply also in relation to those other proceedings or such part of them as the tribunal may direct.

(3) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order—

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

(b) in the case of publication in any other form, the person publishing the matter, and

(c) in the case of matter included in a relevant programme—

(i) any body corporate engaged in providing the service in which the programme is included, and

(ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where a person is charged with an offence under subsection (3), it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the matter in question.

(5) Where an offence under subsection (3) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in any such capacity,

he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In relation to a body corporate whose affairs are managed by its members “director”, in subsection (5) means a member of the body corporate.

(7) In this section—

“evidence of a personal nature” means any evidence of a medical, or other intimate, nature which might reasonably be assumed to be likely to cause significant embarrassment to the complainant if reported.

“identifying matter” means any matter likely to lead members of the public to identify the complainant or such other persons (if any) as may be named in the order.

“promulgation” has such meaning as may be prescribed by regulations made by virtue of this section.

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,

“restricted reporting order” means an order—

(a) made in exercise of a power conferred by regulations made by virtue of this section, and

(b) prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain, and

“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.