
STATUTORY INSTRUMENTS

200[] No.

EMPLOYMENT TRIBUNALS

The Employment Tribunals (Constitution and Rules of Procedure) Regulations []

Made 200[]

Laid before Parliament 200[]

Coming into force [6th October 2004]

The Secretary of State, in exercise of the powers conferred on her by [], and after consultation with the Council on Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992^(a), hereby makes the following Regulations: -

Citation and commencement

1. - (1) These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) Regulations 200[4] and the Rules of Procedure contained in Schedules 1, 2, 3, 4, 5 and 6 to these Regulations may be referred to, respectively, as –

- (a) the Employment Tribunals Rules of Procedure 200[4];
- (b) the Employment Tribunals (National Security) Complementary Rules of Procedure 200[4];
- (c) the Employment Tribunals (Equal Value) Complementary Rules of Procedure 200[4];
- (d) the Employment Tribunals (Levy Appeals) Rules of Procedure 200[4];

^(a) 1992 c.53.

- (e) the Employment Tribunals (Improvement and Prohibition Notices Appeals) Rules of Procedure 200[4]; and
- (f) the Employment Tribunals (Non-Discrimination Notices Appeals) Rules of Procedure 200[4].

(2) These Regulations shall come into force on [6 October 2004].

(3) The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001^(b) and the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001^(c) are revoked.

Interpretation

2. - (1) In these Regulations and in Schedules 1, 2, 3, 4, 5 and 6 -

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

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

“chairman” means the President or a member of the panel of chairmen selected in accordance with regulation 8(1)(a), or, for the purposes of national security proceedings, a member of the panel referred to in regulation 10 selected in accordance with regulation 11(a), and in relation to proceedings generally it means the chairman to whom the proceedings have been referred by the President, Vice President or a Regional Chairman;

“Disability Discrimination Act” means the Disability Discrimination Act 1995^(f);

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

“Employment Act” means the Employment Act 2002^(g);

“Employment Rights Act” means the Employment Rights Act 1996^(h);

“Employment Tribunals Act” means the Employment Tribunals Act 1996^(h)

^(b) S.I.2001/1171.

^(c) S.I. 2001/1170.

^(f) 1995 c.50.

^(g) 2000 c.7.

^(g) 2002 c.22.

^(h) 1996 c.18.

^(h) 1996 c.17.

“Employment Tribunal Office” means any office in Great Britain which has been established for any area specified by the President and which is operated by the Employment Tribunals Service to carry out administrative functions in support of functions being carried out by a tribunal or chairman;

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

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

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

“national security proceedings” means proceedings in relation to which a direction is given under section 10(3) of the Employment Tribunals Act, or an order is made under section 10(4) of that Act;

“Office of the Tribunals” means, in England and Wales, the Central Office of the Employment Tribunals (England and Wales) or, in Scotland, the Central Office of the Employment Tribunals (Scotland);

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

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

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

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

[“Register” means the Register of applications, appeals and decisions kept in pursuance of regulation 18];

“Secretary” means a person for the time being appointed to act as the Secretary of the Office of the Tribunals;

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

⁽ⁱ⁾ 1976 c.74.

⁽ⁱ⁾ 1975 c. 65.

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

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

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

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

(2) In these Regulations, in so far as they relate to the rules in Schedules 1, 2 and 3, and in those Schedules^(note) -

"Crown employment proceedings" has the meaning given by section 10(8) of the Employment Tribunals Act;

"Equal Pay Act" means the Equal Pay Act 1970^(l);

"equal value claim" means a claim by a claimant which rests upon entitlement to the benefit of an equality clause by virtue of the operation of section 1(2)(c) of the Equal Pay Act;

"excluded person" means, in relation to any proceedings, a person who has been excluded from all or part of the proceedings by virtue of -

- (a) a direction of a Minister of the Crown under rule 56(1)(b) of Schedule 1, or
- (b) an order of the tribunal under rule 56(2)(a) read with 56(1)(b) or (c) of Schedule 1;

"expert" means a member of the panel of independent experts within the meaning of section 2A(4) of the Equal Pay Act;

"misconceived" includes having no reasonable prospect of success;

"report" means a report required by a tribunal or chairman to be prepared by an expert, pursuant to section 2A(1)(b) of the Equal Pay Act^(m);

"respondent" means a party to the proceedings before a tribunal other than the claimant;

^(k) 1992 c.52.

^(note) [Definitions may need to change once Schedules 2-6 have been updated.]

^(l) 1970 c.41.

^(m) Section 2A was inserted by the Equal Pay (Amendment) Regulations 1983 SI 1983/1794.

"special advocate" means a person appointed pursuant to rule [18A]

(3) In these Regulations, in so far as they relate to the rules in Schedule 4, and in that Schedule -

"Industrial Training Act" means the Industrial Training Act 1982⁽ⁿ⁾;

"Board" means in relation to an appeal the respondent industrial training board;

"decision" includes any order which is not an interlocutory order;

"levy" means a levy imposed under section 11 of the Industrial Training Act.

(4) In these Regulations, in so far as they relate to the rules in Schedule 5, and in that Schedule -

"decision" in relation to the tribunal includes a direction under rule [10] and any order which is not an interlocutory order;

"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;

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

"respondent" means the inspector who issued the improvement notice or prohibition notice which is the subject of the appeal.

(5) In these Regulations, in so far as they relate to the rules in Schedule 6, and in that Schedule -

"Disability Rights Commission Act" means the Disability Rights Commission Act 1999^(o);

"decision" in relation to a tribunal includes a direction under section 68(3) of the Sex Discrimination Act, under section 59(3) of the Race Relations Act or, as the case may be, under paragraph 10(4) of Schedule 3 to the Disability Rights Commission Act and any other order which is not an interlocutory order;

"non-discrimination notice" means a notice under section 67 of the Sex

⁽ⁿ⁾ 1982 c.10.

^(o) 1999 c.17.

Discrimination Act, under section 58 of the Race Relations Act or, as the case may be, under section 4 of the Disability Rights Commission Act;

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

Overriding objective

3. - (1) The overriding objective of these regulations and the rules in Schedules 1, 2, 3, 4, 5 and 6 is to enable tribunals and chairmen to deal with cases justly.

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

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to the complexity of the issues; and

(d) ensuring that it is dealt with expeditiously and fairly.

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

(a) exercises any power given to it by these regulations or the rules in Schedules 1, 2, 3, 4, 5 and 6; or

(b) interprets these regulations or any rule in Schedules 1, 2, 3, 4, 5 and 6.

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

President of Employment Tribunals

4. - (1) There shall be a President of the Employment Tribunals (England and Wales) who shall be appointed by the Lord Chancellor and shall be a person described in paragraph (3).

(2) There shall be a President of the Employment Tribunals (Scotland) who shall be appointed by the Lord President and shall be a person described in paragraph (3).

(3) A President shall be a person -

- (a) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990^(p);
 - (b) being an advocate or solicitor admitted in Scotland of at least seven years standing; or
 - (c) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing.
- (4) A President may resign his office by notice in writing to the appointing office holder.
- (5) If the appointing office holder is satisfied that the President is incapacitated by infirmity of mind or body from discharging the duties of his office, or such President is adjudged to be bankrupt or makes a composition or arrangement with his creditors, the appointing office holder may revoke his appointment.
- (6) The functions of President under these Regulations may, if he is for any reason unable to act or during any vacancy in his office, be discharged by a person nominated for that purpose by the appointing office holder.

Establishment of employment tribunals

5. - (1) Each President shall, in relation to that part of Great Britain for which he has responsibility, from time to time determine the number of tribunals to be established for the purposes of determining proceedings.
- (2) The President, a Regional Chairman or the Vice President shall determine, in relation to the area specified in relation to him, at what times and in what places in that area tribunals and chairmen shall sit.

Regional Chairmen

6. - (1) The Lord Chancellor may from time to time appoint Regional Chairmen from the panel of full time chairmen and each Regional Chairman shall be responsible to the President for the administration of justice by tribunals and chairmen in the area specified by the President (England and Wales) in relation to him.
- (2) The President (England and Wales) or the Regional Chairman for an area may from time to time nominate a member of the panel of full time chairmen to discharge for the time being the functions of the Regional Chairman for that area.

Vice President

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

^(p) 1990 c.41.

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

Panels of members of tribunals – general

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

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

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

(a) a panel of full-time and part-time chairmen appointed by the appointing office holder consisting of persons –

(i) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;

(ii) being an advocate or solicitor admitted in Scotland of at least seven years standing; or

(iii) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing;

(b) a panel of persons appointed by the Secretary of State after consultation with such organisations or associations of organisations representative of employees as she sees fit; and

(c) a panel of persons appointed by the Secretary of State after consultation with such organisations or associations of organisations representative of employers as she sees fit.

(4) Members of the panels constituted under these Regulations shall hold and vacate office under the terms of the instrument under which they are appointed but may resign their office by notice in writing, in the case of a member of the panel of chairmen, to the appointing office holder and, in any other case, to the Secretary of State; and any such member who ceases to hold office shall be eligible for reappointment.

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

Composition of tribunals - general

9. - (1) For each hearing, the President, Vice President or the Regional Chairman shall select a chairman, who shall, subject to regulation 11, be the President or a

member of the panel of chairmen, and the President, Vice President or the Regional Chairman may select himself.

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

(3) In any proceedings which are to be determined by a tribunal whose composition is described in paragraphs (2) or, as the case may be, regulation 11(b), those proceedings may, if the President, Vice President or a Regional Chairman so directs, be heard and determined in the absence of any one member other than the chairman.

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

Panels of member of tribunals – national security cases

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

(a) select a panel of persons from the panel of chairmen to act as chairmen in such cases, and

(b) select -

(i) a panel of persons from the panel referred to in regulation 8(3)(b) as persons suitable to act as members in such cases, and

(ii) a panel of persons from the panel referred to in regulation 8(3)(c) as persons suitable to act as members in such cases.

Composition of Tribunals – national security cases

11. In relation to national security proceedings –

(a) the President, the Regional Chairman or the Vice President shall select a chairman, who shall be the President or a member of the panel selected in accordance with regulation 10(a), and the President, Regional Chairman or Vice President may select himself, and

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

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

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

(2) In section 4(1)(a), for the words "in accordance with regulations made under section 1(1)" substitute the words "in accordance with regulation 9(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 200[]".

(3) In section 4(1)(b), for the words "in accordance with regulations so made" substitute the words "in accordance with regulation 9(1) of those Regulations".

(4) In section 4(5), for the words "in accordance with regulations made under section 1(1)" substitute the words "in accordance with regulation 9(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 200[]".

Practice directions

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

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

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

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

Power to prescribe

14.- (1) The Secretary of State may prescribe:-

- (a) one or more versions of a form which shall be used by all claimants for the purpose of instituting proceedings in an employment tribunal ("claim form") except any claim or proceedings listed in paragraph (3);

(b) one or more versions of a form which shall be used by all respondents to a claim for the purpose of responding to a claim before an employment tribunal (“response form”) except respondents to a claim or proceedings listed in paragraph (3); and

(c) that the provision of certain information and answering of certain questions in a claim form or in a response form is mandatory (respectively “the required information” and “the required questions”) in all proceedings save those listed in paragraph (3).

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

(3) The proceedings referred to in paragraph (1) are proceedings which are referred to an employment tribunal by a court and proceedings brought under any of the following enactments:

- (a) sections 19, 20 or 22 of the National Minimum Wage Act 1998^(q);
- (b) section 11 of the Employment Rights Act where the proceedings are brought by the employer.

Calculation of time limits

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

(2) Where any act must or may be done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. For example, a respondent is sent a copy of a claim on 1st October. He must present a response to the Employment Tribunal Office within 23 days of having been sent the copy. The last day for presentation of the response is 24th October.

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

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

^(q) 1998 c.39.

(5) In rule [27(2)] of Schedule 1, rule 8 of Schedule 4, rule 6(1) of Schedule 5 and rule 4(1) of Schedule 6, the requirement to send the notice of Hearing to the parties not less than 14 days before the date fixed for the Hearing shall not be construed as a requirement for service of the notice to have been effected not less than 14 days before the Hearing date, but as a requirement for the notice to have been placed in the post not less than 14 days before that date. For example, a Hearing is fixed for 15th October. The last day on which the notice may be placed in the post is 1st October.

Application of Schedules 1-6 to proceedings

16. - (1) Subject to paragraphs (2) to (5), the rules in Schedule 1 shall apply in relation to all proceedings before an employment tribunal except where separate rules of procedure made under the provisions of any enactment are applicable.

(2) In proceedings to which the rules in Schedule 1 apply and in which any power conferred on the Minister or the tribunal by rule [56 (1), (2) or (3)]of Schedule 1 is exercised –

(a) rules [5 to 10, 18, 26, 28, 29, and 31 to 39] of Schedule 1 shall be modified in accordance with Schedule 2; and

(b) rules [7A (special advocate) (*possibles re-numbering to fit with Schedule 1*)] and [7B (reasons for the tribunal's decision in national security cases)], as referred to in paragraph 4 of Schedule 2, shall be inserted into Schedule 1.

(3) In proceedings to which the rules in Schedule 1 apply and which involve an equal value claim –

(a) rules [10, 28, 31 to 34, 40 to 49 and 63]of Schedule 1 shall be modified in accordance with Part I of Schedule 3; and

(b) rule [10A (procedure relating to expert's report)], as referred to in paragraph 2 of Part I of Schedule 3, shall be inserted into Schedule 1.

(4) In proceedings to which the rules in Schedule 1 apply, and in which the rules in Schedule 1 are required to be modified in accordance with both paragraphs (2) and (3) –

(a) the insertion of rules [4(9), 7B and 12(5A) to (5D)] into Schedule 1 shall be in accordance with Part II of Schedule 3; and

(b) rule [28(3)] of Schedule 1 shall be modified in accordance with Part II of Schedule 3.

(5) The rules in Schedules 4, 5 and 6 shall apply in relation to proceedings before a tribunal which consist, respectively, in –

(a) an appeal by a person assessed to levy imposed under a levy order made under section 12 of the Industrial Training Act;

(b) an appeal against an improvement or prohibition notice under section 24 of the Health and Safety Act; and

(c) an appeal against a non-discrimination notice under section 68 of the Sex Discrimination Act, section 59 of the Race Relations Act or paragraph 10 of Schedule 3 to the Disability Rights Commission Act.

[Register

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

(2) The Register shall contain –

(a) details of claims in accordance with rule 2(3) of Schedule 1;

(b) details of appeals in accordance with rule 5 of Schedule 4, rule 3 of Schedule 5 and rule 2 of Schedule 6;

(c) the fact of applications in accordance with rule 4 of Schedule 5; and

(d) documents recording the [decisions] of tribunals or chairmen and the reasons for them.

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

[Proof of decisions of tribunals

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

Transitional provision

19. These Regulations and Schedules 1 to 6 to them shall apply in relation to all proceedings to which they relate where those proceedings were commenced on or after [1 October 2004].

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

[Date]

SCHEDULE 1

Regulation 16

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HOW TO BRING A CLAIM

Starting a claim

1. (1) A claim may be brought before an employment tribunal by the claimant presenting to an Employment Tribunal Office the details of his claim in writing. Those details must include all the relevant required information (subject to paragraph (4) and rule 55).

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

claimant must provide all information which is identified on the prescribed form as being "required information".

- (3) Subject to paragraph (4), the required information in relation to the claim is:
- (a) each claimant's full name;
 - (b) each claimant's address;
 - (c) if different from the claimant's address, an address to which the claimant would like correspondence in relation to the proceedings sent;
 - (d) the name of each person who the claim is made against ("the respondent");
 - (e) each respondent's address;
 - (f) details of the claim;
 - (g) whether or not the claimant is or was an employee of the respondent;
 - (h) whether or not the respondent has dismissed the claimant;
 - (i) whether or not the claimant has raised the subject matter of the claim with the respondent in writing at least 28 days prior to presenting the claim to an Employment Tribunal Office;
 - (j) if the claimant has not done as described in (i), why he has not done so.

(4) In the following circumstances the required information identified below will not be required to be provided in relation to that claim:

- (a) if the claimant is not or was not an employee of the respondent, the information in paragraphs (3)(h) to (j) is not required;
- (b) if the claimant was an employee of and was dismissed by the respondent, the information in paragraphs (3)(i) and (j) is not required;
- (c) if the claimant was an employee of and was not dismissed by the respondent, and the claimant has raised the subject matter of the claim with the respondent as described in paragraph (3)(i), the information in paragraph (3)(j) is not required.

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

ACCEPTANCE OF CLAIM PROCEDURE

What the tribunal does after receiving the claim

2. (1) On receiving the claim the Secretary shall consider whether the claim should be accepted in accordance with rule 3. If a claim is not accepted the tribunal shall not proceed to deal with the claim and it shall not be copied to the respondent, but the claim shall instead be returned to the claimant.

(2) If the Secretary accepts the claim, he shall:-

- (a) send a copy of it to each respondent;
 - (b) inform the parties in writing of the case number of the claim (which must from then on be referred to in all correspondence relating to the claim) and the address to which notices and other communications to the tribunal must be sent;
 - (c) inform the respondent in writing about how to present a response to the claim, the time limit for doing so, what may happen if a response is not entered within the time limit and that the respondent has a right to receive a copy of the judgment disposing of the claim;
 - (d) when any enactment relevant to the claim provides for conciliation, notify the parties that the services of a conciliation officer are available to them;
 - (e) when rule 22 applies, notify the parties of the date on which ACAS's duty to conciliate ends and that after that date the services of a conciliation officer shall be available to them only in limited circumstances; and
 - (f) [enter such details of the claim as are listed in paragraph (3) in the Register within 28 days of receiving the claim or, if that is not practicable, as soon as is reasonably practicable thereafter].
- (3) [The details of a claim to be entered in the Register are, (subject to rule 51):-
- (a) the case number;
 - (b) the date the Secretary received the claim (on this occasion);
 - (c) the name and address of each claimant;
 - (d) the name and address of each respondent;
 - (e) the Employment Tribunal Office dealing with the claim; and
 - (f) the type of claim brought in general terms without reference to detail.]

When the claim will not be accepted by the Secretary

3. (1) When a claim is required under rule 1(2) to be presented using a prescribed form, if a prescribed form has not been used, provided none of the circumstances listed in paragraph (2) of this rule also apply to the claim, the Secretary shall not accept [or register] the claim and shall return it to the claimant with an explanation of why the claim has been rejected and provide a prescribed claim form.

(2) The Secretary shall not accept [or register] the claim if it is clear to him that one or more of the following circumstances applies:-

- (a) the claim does not include all the relevant required information as required under these rules;
- (b) answers have not been provided to all of the required questions as required under these rules;
- (c) a time limit applies to the claim which the tribunal has no power to extend and the claim has not been presented within that time limit;
- (d) the claimant does not meet the qualifying conditions for the right claimed (for example, a period of continuous employment);
- (e) the tribunal does not have jurisdiction to award the remedy claimed; or
- (f) if section 32 of the Employment Act (complaints about grievances) applies to the claim, the claim has been presented to the tribunal in breach of subsections (2) to (4) of section 32.

(3) In paragraph (1)(c) the date of the presentation of the claim under consideration is the date on which a claim which fully complies with paragraphs (1) to (4) of rule 1 was presented to an Employment Tribunal Office.

(4) If the Secretary decides not to accept a claim for any of the reasons in paragraph (2), either alone or in conjunction with the reason listed in paragraph (1), he shall refer the claim together with a statement of his reasons for not accepting it to a chairman. The chairman shall decide whether, in his opinion, the claim should be accepted and the claim allowed to proceed. Subject to paragraph (5), if he considers it appropriate, the chairman may invite the claimant to a pre-acceptance hearing before he decides whether the claim should be accepted.

(5) If the chairman decides that the claim should be accepted he shall inform the Secretary in writing and the Secretary shall accept the claim and then proceed to deal with it as described in rule 2(2).

(6) Subject to paragraph (7), if the chairman decides that the claim should not be accepted he shall record his decision together with the reasons for it in writing in a document signed by him. The Secretary shall as soon as is reasonably practicable inform the claimant of that decision and the reasons for it in writing together with information on how that decision may be reviewed or appealed. The Secretary shall return the claim to the claimant.

(7) If the chairman considers that the claim should be rejected and that it will not be possible for the claimant to remedy the defect and present his claim again within the applicable time limit, before rejecting the claim the chairman shall invite the claimant to make written or oral representations to him. Any oral representations shall be heard at a pre-acceptance hearing.

(8) Where a claim has been presented to the tribunal in breach of subsections (2) to (4) of section 32 of the Employment Act, the Secretary shall notify the claimant of the time limit which applies to that person's claim and shall inform them of the consequences of not complying with section 32 of that Act.

(9) Except for the purposes of paragraph (8) and (10) or any appeal to the Employment Appeals Tribunal, where a chairman has decided that a claim should not be accepted such a claim is to be treated as if it had not been received by the Secretary on that occasion.

(10) Any decision by a chairman not to accept a claim may be reviewed in accordance with rules 36 to 38. If the result of such review is that the claim should have been accepted, then paragraph (9) shall not apply to that claim and the Secretary shall then accept the claim and proceed to deal with it as described in rule 2(2).

(11) A decision to accept or not to accept a claim under the pre-acceptance procedure shall not bind any future tribunal or chairman where any of the issues listed in rule 3(2) fall to be determined later in the proceedings.

(12) Any pre-acceptance hearing which is required to be held under paragraph (5) shall be conducted by a chairman in public (subject to rule 29). Where there is discretion as to whether a pre-acceptance hearing is held, the pre-acceptance hearing may take place in private. If the pre-acceptance hearing is to take place in public the proposed respondent shall be given notice of such hearing and he may make oral or written representations at the hearing.

Compliance with grievance procedures

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

RESPONSE

Responding to the claim

5.(1) If the respondent wishes to respond to the claim made against him he must present his response to the Employment Tribunal Office within 23 days of the date on which he was sent a copy of the claim. The response must include all the relevant required information. The time limit for the respondent to present his response may be extended under paragraph (4) of this rule if it is just and equitable to do so.

(2) Any response presented on or after [6 April 2005] must be on a response form prescribed by the Secretary of State pursuant to regulation 16, unless it is a response in proceedings under one of the enactments listed in regulation 16(3).

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

- (a) the respondent's full name;
- (b) the respondent's address;
- (c) if different from the respondent's address, an address to which the respondent would like correspondence in relation to the proceedings sent;
- (d) whether or not the respondent wishes to resist the claim and, if so, on what grounds.

(4) The respondent may apply under rule 11 for an extension of the time limit within which he is to present his response. Such application must be presented to the Employment Tribunal Office within 23 days of the date on which the respondent was sent a copy of the claim and must explain why the respondent cannot comply with the time limit. The time limit may be extended only if the chairman or tribunal is satisfied that it is just and equitable to do so.

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

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

ACCEPTANCE OF RESPONSE PROCEDURE

What the tribunal does after receiving the response

6.(1) On receiving the response the Secretary shall consider whether the response should be accepted in accordance with rule 7. If the response is not accepted it shall be returned to the respondent and the claim shall be dealt with as if no response to the claim had been presented.

(2) If the Secretary accepts the response he shall send a copy of it to all other parties.

When the response will not be accepted by the Secretary

7.(1) Where a response is required to be presented using a prescribed form under rule 5(2), if a prescribed form has not been used, provided none of the circumstances listed in paragraph (2) of this rule also apply to the response, the Secretary shall not accept [or register] the response and shall return it to the respondent with an explanation of why the response has been rejected and provide a prescribed response form.

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

- (a) the response does not include all the required information as required by these rules;
- (b) the response has not been presented within the relevant time limit.

(3) In paragraph (1)(b) the date of presentation of the response under consideration is the date on which a response which fully complies with paragraphs (1) to (3) of rule 5 was presented to an Employment Tribunal Office.

(4) If the Secretary decides not to accept a response for either of the reasons in paragraph (2), either alone or in conjunction with the reason listed in paragraph (1), he shall refer the response together with a statement of his reasons for not accepting the response to a chairman. The chairman shall decide whether, in his opinion, the response should be accepted. If he considers it appropriate the chairman may invite the respondent and the claimant to a pre-hearing review before he decides whether the response should be accepted.

(5) If the chairman decides that the response should be accepted he shall inform the Secretary in writing and the Secretary shall accept the response and then deal with it in accordance with rule 6(2).

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

(7) Any decision by a chairman not to accept a response may be reviewed in accordance with rules 36 to 38. If the result of such a review is that the response should

have been accepted, then the Secretary shall accept the response and proceed to deal with the response as described in rule 6(2).

CONSEQUENCES OF A RESPONSE NOT BEING PRESENTED OR ACCEPTED

Default judgments

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

(2) Those circumstances are when either:

- (a) no response in those proceedings has been presented to an Employment Tribunal Office within the relevant time limit; or
- (b) a response has been so presented, but a decision has been made not to accept the response either by the Secretary under rule 7(1) or by a chairman under rule 7(4), and the Employment Tribunal Office has not received an application to have that decision reviewed;

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

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

(4) Any default judgment issued by a chairman under this rule shall be recorded in writing and shall be signed by him. The Secretary shall send a copy of that judgment to the parties, to ACAS, and, if the proceedings were referred to the tribunal by a court, to that court. The Secretary shall also inform the parties of their right to have the default judgment reviewed under rule 35 and of the circumstances in which it may be appealed. [The Secretary shall put a copy of the default judgment on the Register (subject to rule 51).]

(5) The claimant or respondent may apply to have the default judgment reviewed in accordance with rule 35.

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

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

Taking no further part in the proceedings

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

- (a) to make an application under rule 35 for a default judgment to be reviewed;
- (b) to make an application under rule 37 in respect of rule 36(3)(b);
- (c) to be called as a witness by another person; or
- (d) to be sent a copy of a document or corrected entry in pursuance of rule 8(4), 31(2) or 39

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

CASE MANAGEMENT

General power to manage proceedings

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

(2) A chairman may give directions:-

- (a) as to the manner in which the proceedings are to be conducted, including any time limit to be observed;
- (b) that a party provide additional information;
- (c) requiring persons to attend and give evidence or to produce documents (subject to rule 13);
- (d) as to extending any time limits, whether or not expired (subject to rule 5(4));

- (e) to require the provision of written answers to questions put by the tribunal or chairman;
- (f) that, subject to rule 23, proceedings be subject to the standard conciliation period instead of the short conciliation period;
- (g) staying (in Scotland, sisting) the whole or part of any proceedings;
- (h) that part of the proceedings may be dealt with separately;
- (i) that different claims may be considered together;
- (j) that any person who the chairman or tribunal considers may be liable for the remedy claimed should be made a respondent in the proceedings;
- (k) dismissing the claim against a respondent who is no longer directly interested in the claim;
- (l) postponing or adjourning any hearing;
- (m) varying or revoking other directions;
- (n) giving notice to the parties of a pre-hearing review or the Hearing; or
- (o) giving notice under rule 19.
- (p) giving leave to amend a claim or response;
- (q) that any person who the chairman or tribunal considers has an interest in the outcome of the proceedings may be joined as a party to the proceedings.

(3) A direction may specify the time at or within which and the place at which any act is required to be done. A direction may also impose conditions and it shall inform the parties of the potential consequences of non-compliance set out in rule 14.

(4) A direction as described in paragraph (2)(i) may be made only if all relevant parties have been given notice that such a direction may be made in particular proceedings and they have been given the opportunity to make oral or written representations as to why such a direction should not be made.

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

Applications in proceedings

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

(2) The application must be in writing to the Employment Tribunal Office and include the case number for the proceedings and the reasons for the request. If the application is for a case management discussion or a pre-hearing review to be held, it must identify the directions or orders sought.

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

(4) When a party is legally represented (as defined in rule 40(5)) in relation to the application, except where the application is for a witness order only, that party or his representative must provide all other parties with the following information in writing:

- (a) details of the application and the reasons why it is sought;
- (b) that any objection to the application must be sent to the Employment Tribunal Office within 7 days of being informed in writing of the application;
- (c) that any objection to the application must be copied to both the tribunal and all other parties;

at the same time as the application is sent to the Employment Tribunal Office.

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

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

(7) Where a requirement in a direction or order has been imposed on a person who is not a party to the proceedings that party may apply in accordance with paragraph (2) to have the direction or order varied or set aside.

Chairman acting on his own initiative

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

(2) Where a chairman makes a direction without giving the parties the opportunity to make representations-

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

(3) An application under paragraph (2)(b) may not be made more than 14 days after the date on which the direction was sent to the party making the application. Such an application must be made in writing to an Employment Tribunal Office and it must include the reasons for the application. Paragraphs (4) and (5) of rule 11 apply in relation to informing the other parties of the application.

Witness orders and disclosure of documents

13.(1) A direction made under rule 10 may:

- (a) require the attendance of any person in Great Britain, including a party, either to give evidence or to produce documents or both and may appoint the time and place at which the person is to attend and, if so required, to produce any document; or
- (b) require any person in Great Britain, including a party, to grant to a party such disclosure or inspection (including the taking of copies) of documents;

provided that the direction made does not require a person to do something which they could not be required to do under part 31 of the Civil Procedure Rules^(b) or, in Scotland, which they could not be required to do by order of a sheriff.

(2) A direction to require a person other than a party to grant disclosure or inspection of documents may be made only where the disclosure sought is necessary in order to dispose fairly of the claim or to save expense.

(3) Any document containing a requirement under paragraph (1) shall state that under s.7(4) of the Employment Tribunals Act, any person who without reasonable excuse fails to comply with the requirement shall be liable on summary conviction to a fine, and the document shall also state the amount of the current maximum fine.

Compliance with directions and practice directions

14.(1) If a direction made under rule 10 is not complied with, a chairman:

- (a) may make an order in respect of costs or preparation time under rules 40 to 48; or
- (b) may (subject to rule 19) at a pre-hearing review or a Hearing make an order to strike out the whole or part of the claim or, as the case may be, the response and, where appropriate, direct that a respondent be debarred from responding to the claim altogether.

^(b) S.I. [].

(2) A direction may also include an order that unless the direction is complied with the claim or, as the case may be, the response may be struck out without the need to give notice under rule 19 or hold a pre-review or Hearing.

(3) Parties to proceedings, chairmen and tribunals shall comply with any practice directions issued under regulation 15. If a practice direction is not complied with by a party, a chairman may make an order as described in paragraph (1).

DIFFERENT TYPES OF HEARING

Hearings - general

15. A chairman or a tribunal may (depending on the relevant rule) hold the following types of hearing or discussion:

- (a) a pre-acceptance hearing under rule 3;
- (b) a case management discussion under rule 17;
- (c) a pre-hearing review under rule 18;
- (d) a Hearing under rule 26; or
- (e) a review hearing under rule 35 or 38.

Use of electronic communications

16.(1) A hearing (other than those mentioned in sub-paragraphs (d) and (e) of rule 15) may be conducted by telephone, video or Minicom provided that the chairman conducting the hearing considers it just and equitable to do so.

(2) Where a hearing is required by these rules to be held in public and it is to be conducted by use of electronic communications in accordance with this rule then, subject to rule 29, it must be held in a room to which the public has access and using equipment so that the public is able to hear and, if applicable, see, all parties to the communication.

CASE MANAGEMENT DISCUSSIONS

Conduct of case management discussions

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

(2) A case management discussion shall not take place unless the Secretary has sent notice to the parties giving them the opportunity to submit representations in writing and to advance oral argument at the discussion if they so wish.

(3) Any determination of a person's civil rights or obligations shall not be dealt with in a case management discussion. The matters listed in rule 10(2) are examples of matters which may be dealt with at case management discussions. Orders listed in rule 18(4) may not be made at a case management discussion.

PRE-HEARING REVIEWS

Conduct of pre-hearing reviews

18.(1) Pre-hearing reviews shall be conducted by a chairman and, subject to rule 29, shall take place in public. Pre-hearing reviews shall not take place unless the Secretary has sent notice to the parties giving them the opportunity to submit representations in writing and to advance oral argument at the review if they so wish.

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

- (a) determine any interim or preliminary matter relating to the proceedings;
- (b) issue any direction in accordance with rule 10;
- (c) order that a deposit be paid in accordance with rule 20;
- (d) consider any oral or written representations or evidence.

(3) Notwithstanding the preliminary or interim nature of a pre-hearing review, at such a review the chairman may give judgment on any preliminary issue of substance relating to the proceedings. Judgments or rulings made or directions given at a pre-hearing review may result in the proceedings being struck out or dismissed or otherwise determined with the result that a Hearing is no longer necessary in those proceedings.

(4) Subject to rule 19, the following judgments or orders may be made at a pre-hearing review or, if no party to whom notice has been sent under rule 19 has requested that the matter be dealt with at a pre-hearing review, they may be made in the absence of the parties:

- (a) as to the entitlement of any party to bring or contest particular proceedings;
- (b) striking out or amending all or part of any claim or response on the grounds that it is scandalous, or vexatious or has no reasonable prospect of success;
- (c) striking out any claim or response on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant or

the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

- (d) striking out a claim which has not been actively pursued;
- (e) striking out a claim or response (or part of one) for non compliance with a direction or practice direction;
- (f) making a restricted reporting order (subject to rule 52).

(5) A claim or response or any part of one may be struck out under these rules only on the grounds stated in sub-paragraphs (4)(b) to (e).

(6) If at a pre-hearing review any of the matters listed in subparagraphs (4)(a) to (e) or a deposit under rule 20 has been considered, the chairman who conducted that pre-hearing review shall not be a member of the tribunal at the Hearing in relation to those proceedings.

Notice requirements for orders

19.(1) Before a chairman or a tribunal makes a judgment or order described in rule 18(4), except where the order is made under rule 14(2), the Secretary shall send notice to the party against whom it is proposed that the order should be made giving him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send such notice to that party if the party has been given an opportunity to give reasons orally to the chairman or the tribunal as to why the order should not be made.

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

PAYMENT OF A DEPOSIT

Requirement to pay a deposit in order to continue with proceedings

20.(1) At a pre-hearing review if a chairman considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have little prospect of success but are nevertheless arguable, the chairman may make an order against that party requiring the party to pay a deposit of an amount not exceeding £500 as a condition of being permitted to continue to take part in the proceedings relating to that matter.

(2) No order shall be made under this rule unless the chairman has taken reasonable steps to ascertain the ability of the party against whom it is proposed to make the order to

comply with such an order, and has taken account of any information so ascertained in determining the amount of the deposit.

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

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

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

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

(5) The deposit paid by a party under an order made under this rule shall be refunded to him in full except where rule 49 applies.

CONCILIATION

Documents to be sent to conciliators

21.(1) In proceedings brought under the provisions of any enactment providing for conciliation, the Secretary shall send copies of all documents, directions, orders judgments and notices to an ACAS conciliation officer.

(2) Paragraph (1) does not apply in relation to documents etc. falling within a category in respect of which the Secretary and ACAS have agreed that copies need not be sent.

Fixed period for conciliation

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

- (a) the Equal Pay Act, section 2(1);
 - (b) the Sex Discrimination Act, Part II, section 63;
 - (c) the Race Relations Act, Part II, section 54; and
 - (d) the Disability Discrimination Act, Part II, section 8
 - (e) the Employment Equality (Sexual Orientation) Regulations 2003^(a);
 - (f) the Employment Equality (Religion or Belief) Regulations 2003^(b).
- (2) In all proceedings to which this rule applies there shall be a conciliation period to give a time limited opportunity for the parties to reach an ACAS conciliated settlement (the “conciliation period”).
- (3) In any proceedings to which this rule applies a Hearing shall not take place during the conciliation period and where the time and place of a Hearing has been fixed to take place during the conciliation period, such Hearing shall be postponed until after the end of the conciliation period. The fixing of the time and place for the Hearing may take place during the conciliation period. Pre-hearing reviews and case management discussions may take place during the conciliation period.
- (4) The conciliation period commences on the date on which the Secretary sends a copy of the claim to the respondent. The duration of the conciliation period shall be determined in accordance with the following paragraphs, but these provisions are subject to the early termination provisions in rule 23.
- (5) In any proceedings which consist of claims under any of the following enactments (but no other enactments) the conciliation period is seven weeks (the “short conciliation period”):
- (a) Employment Tribunals Act section 3 (breach of contract);
 - (b) the following provisions of the Employment Rights Act:
 - sections 13 to 27 (failure to pay wages or an unauthorised deduction of wages);
 - section 28 (failure to provide a guaranteed payment);
 - section 64 (failure to pay remuneration whilst suspended for medical reasons); or
 - sections 163 or 164 (failure to pay a redundancy payment).

^(a) S.I. 2003/1661.

^(b) S.I. 2003/1660.

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

(7) In proceedings subject to the standard conciliation period, that conciliation period may be extended by a period of a further two weeks if, before the expiry of the standard conciliation period, all of the following circumstances apply:

- (a) all parties to the proceedings agree to the extension of the conciliation period;
- (b) a realistic proposal for settling the proceedings has been made and is under serious consideration by the parties;
- (c) ACAS considers it probable that the proceedings will be settled during the further extended conciliation period; and
- (d) ACAS has notified the Secretary in writing that the conditions in subparagraphs (a) to (c) are satisfied.

(8) Any proceedings which according to paragraph (5) are subject to a short conciliation period may, if that period has not already ended, become subject to a standard conciliation period if a chairman considers on the basis of the complexity of the proceedings that a standard conciliation period would be more appropriate. Where a chairman makes such a direction the Secretary shall inform the parties to the proceedings and ACAS in writing as soon as reasonably practicable.

Early termination of conciliation period

23.(1) Should one of the following circumstances arise during any conciliation period (be it short or standard) the conciliation period shall terminate early on the relevant date specified (and if more than one circumstance or date listed below is applicable to any proceedings, the conciliation period shall terminate on the earliest of those dates);

- (a) where a default judgment is issued which determines both liability and remedy, the date of such default judgment;
- (b) where a default judgment is issued which determines liability only, the date which is 14 days after the date of such default judgment;
- (c) where either the claim or the response is struck out, the date of the judgement to strike out;
- (d) where either the claim or the response is withdrawn, the date of receipt by the Employment Tribunal Office of the notice of withdrawal;

- (e) where one or more parties to the proceedings have informed ACAS in writing that they do not wish to proceed with attempting to conciliate in relation to those proceedings, the date on which ACAS sends notice of such circumstances to the parties to the proceedings and to the Employment Tribunal Office;
- (f) where the parties have reached a settlement by way of compromise agreement (including a compromise agreement to refer proceedings to arbitration), the date on which the Employment Tribunal Office receives notice from both of the parties to that effect;
- (g) where the parties have reached a settlement through ACAS (including a settlement to refer the proceedings to arbitration), the date on which ACAS sends notice to that effect to the Employment Tribunal Office;
- (h) where no response has been accepted in the proceedings and no default judgment has been issued, the date which is 14 days after the expiry of the time limit for presenting the response to the Secretary.

(2) In sub-paragraph (1)(f) a compromise agreement means an agreement to refrain from continuing proceedings where the agreement meets the conditions in section 203(3) of the Employment Rights Act.

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

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

Effect of staying or sisting proceedings on conciliation periods

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

WITHDRAWAL OF PROCEEDINGS

Right to withdraw proceedings

25.(1) A claimant may withdraw all or part of his claim at any time.

(2) To withdraw a claim or part of one the claimant must inform the Employment Tribunal Office in writing of the claim or the parts of it which are to be withdrawn (“notice of withdrawal”). The Secretary shall send a copy of the notice of withdrawal to all other parties. Where there is more than one respondent the notification must specify against which respondents the claim is being withdrawn.

(3) Withdrawal takes effect on the date on which the Employment Tribunal Office receives notice of it and where the whole claim is withdrawn, subject to paragraph (4), proceedings are brought to an end against the relevant respondent on that date. Withdrawal of a claim shall not have the effect that the claim can never be continued – an application to set aside the notice of withdrawal may be made by the claimant under paragraph (6). Withdrawal does not affect proceedings as to costs or preparation time.

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

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

(6) A claimant who withdraws a claim (“the first claim”) needs the permission of a chairman either to continue the first claim or to make a further claim against the same respondent if:

- (a) the first claim was withdrawn after the respondent entered a response; and
- (b) the further claim arises out of facts which are the same or substantially the same as those relating to the first claim.

THE HEARING

Hearings

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

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

- (3) Any Hearing of a claim shall take place in public, subject to rule 29.

Fixing the time and place of the Hearing

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

- (2) The Secretary shall send the notice of Hearing to every party not less than 14 days before the date fixed for the Hearing except:-

- (a) where the Secretary has agreed a shorter time with the parties; or
- (b) on an application for interim relief made under section 161 of TULR(C)A or section 128 of the Employment Rights Act.

What happens at the Hearing

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

(2) The tribunal shall make such enquiries of persons appearing before it and of witnesses as it considers appropriate and shall otherwise conduct the Hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally for the just handling of the proceedings.

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

(4) The tribunal shall require parties and witnesses to give evidence on oath or affirmation. The tribunal may exclude from the Hearing persons who are to appear as a witness in the proceedings until such time as they give evidence if it considers it reasonable in the interests of justice to do so.

(5) If a party wishes to submit written representations for consideration by a tribunal at a Hearing he shall present them to the Secretary not less than 7 days before the Hearing and shall at the same time send a copy to all other parties.

(6) The tribunal may, if it considers it appropriate, consider representations in writing which have been submitted to the Employment Tribunal Office and copied to all other parties less than 7 days before the Hearing.

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

(8) If a tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (7), it shall first consider any information in its possession which has been made available to it by the parties.

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

Proceedings which may be held in private

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

- (a) which he could not disclose without contravening a prohibition imposed by or by virtue of any enactment;
- (b) which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence placed on him by another person; or
- (c) the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of TULR(C)A, cause substantial injury to any undertaking of his or any undertaking in which he works.

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

DIRECTIONS, ORDERS, JUDGMENTS AND REASONS

Types of decision

30 - (1) Chairmen and tribunals may issue the following different types of decision:

- (a) a judgment is a final determination of the proceedings or of a particular issue in those proceedings; it may include an award of compensation, a declaration or recommendation and it may also include orders for costs, preparation time or wasted costs;

(b) an order or direction may be issued in relation to interim matters and it will direct a person to do something.

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

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

Form and content of judgments

31.(1) When judgment is reserved a written judgment shall be sent to the parties at a later date. All judgments (whether issued orally or in writing) shall be recorded in writing and signed by the chairman.

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

(3) Where the judgment includes an award of compensation or a determination that one party is required to pay a sum to another (excluding an order for costs, allowances, preparation time or wasted costs), the document shall also contain a statement of the amount of compensation awarded, or of the sum required to be paid. Any award or order that a sum is payable shall be due for payment two days after the date on which the judgment is sent to the parties .

Reasons

32. (1) A tribunal or chairman must give reasons for judgments. Reasons may be given for orders or directions, but shall be given if a request for them is made before or at the time the order or direction is made. Reasons may be given orally at the time of issuing the judgment, order or direction or they may be reserved to be given in writing at a later date. If reasons are reserved, they shall be signed by the chairman and sent to the parties by the Secretary.

(2) When reasons have been issued orally, written reasons shall only be provided if requested by one of the parties to the proceedings within the time limits set out in paragraph (3). When such a request has been made, the Secretary shall send a copy of the reasons to all parties to the proceedings. Written reasons shall be signed by the chairman.

(3) A request for written reasons must be made either at the hearing or within 14 days of the judgment.

- (4) Written reasons for a judgment shall include the following information:
- (a) the issues which the tribunal or chairman has determined;
 - (b) if some issues were not determined, what those issues were and why they were not determined;
 - (c) any findings of fact relevant to the issues which have been determined;
 - (d) a concise statement of the applicable law;
 - (e) how the relevant findings of fact and applicable law have been applied in order to determine the issues; and
 - (f) where the judgment includes an award of compensation or a determination that one party make a payment to the other, a table showing how the amount or sum has been calculated or a description of the manner in which it has been calculated.

Incapacity of chairman

33. Where it is not possible for a judgment or reasons to be signed by the chairman due to death or incapacity:

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

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

[Entry of decisions on the register]

34.(1) Subject to rule 51, the Secretary shall enter [a copy] of any decision listed in rule 36(1)(b) to (d) and any written reasons in the Register.

(2) Reasons for decisions shall be omitted from the Register in any case in which evidence has been heard in private and the tribunal or chairman so directs. In such a case the Secretary shall send the reasons to each of the parties; and where there are proceedings before a superior court relating to the decision in question, he shall send the reasons to that court, together with a copy of the entry in the Register of the decision.]

POWER TO REVIEW DECISIONS

Review of default judgments

35. (1) A claimant or respondent may apply to have a default judgment against or in favour of them reviewed. An application must be made in writing and presented to the Employment Tribunal Office promptly. The application must state the reasons why the default judgment should be varied or revoked.

(2) When it is the respondent applying to have the default judgment reviewed, the application must include with it the respondent's proposed response to the claim and an application for an extension of the time limit for presenting the response.

(3) A review of a default judgment shall be conducted by a chairman in public. Notice of the application shall be sent by the Secretary to all other parties to the proceedings and they shall be given the opportunity to make oral or written representations to the chairman.

(4) The chairman may:

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

and all parties to the proceedings shall be informed by the Secretary in writing of the decision made by the chairman.

(5) A default judgment must be revoked if the whole of the claim was satisfied before the judgment was issued or if rule 8(6) applies. A chairman may revoke or vary all or part of a default judgment if:

- (a) the respondent has a reasonable prospect of successfully responding to the claim or part of it; or
- (b) it appears to the chairman that there is some other good reason why the judgment should be revoked or varied or the respondent should be allowed to resist the claim.

(6) In considering the application for a review of a default judgment the chairman must have regard to whether the person making the application has done so promptly.

(7) If the chairman decides that the default judgment should be varied or revoked and that the respondent should be allowed to respond to the claim the Secretary shall accept the response and proceed in accordance with rule 6(2).

Review of other decisions

36.(1) Parties may apply to have certain decisions made by a tribunal or a chairman reviewed under rules 36 to 38. Those decisions are:

- (a) a decision not to accept a claim or response;
- (b) any order described in rule 18(4);
- (c) a judgment (other than a default judgment);
- (d) an award (including an order for costs or preparation time);

and references to the word “decision” in rules 36 to 38 is a reference to the above decisions only. Other decisions or orders may not be reviewed under these rules. Where a decision cannot be reviewed there may be a right of appeal to the Employment Appeal Tribunal.

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

(3) Decisions may be reviewed on the following grounds only:

- (a) the decision was wrongly made as a result of an administrative error;
- (b) a party did not receive notice of the proceedings leading to the decision;
- (c) the decision was made in the absence of a party;
- (d) new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time; or
- (e) the interests of justice require such a review.

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

Preliminary consideration of application for review

37.(1) An application to have a decision reviewed must be made to an Employment Tribunal Office within 28 days of the date on which the decision was sent to the parties. Subject to paragraph (2) such application must be in writing and must state the grounds of the application.

(2) If the decision to be reviewed was made at a hearing, an application may be made orally at the hearing.

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

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

and that person shall refuse the application if he considers that there are no grounds for the decision to be reviewed under rule 36(3) or there is no reasonable prospect of the decision being varied or revoked.

(4) If an application for a review is refused after such preliminary consideration the Secretary shall inform the party making the application in writing. If the application for a review is not refused the decision shall be reviewed under rule 38.

The review

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

(2) In the circumstances where no application has been made by a party, the review must be carried out by the same tribunal or chairman who made the original decision and:

- (a) a notice must be sent to each of the parties explaining in summary the ground upon which and reasons why it is proposed to review the decision and giving them an opportunity to give reasons why there should be no review; and
- (b) such notice must be sent before the expiry of 14 days from the date on which the original decision was sent to the parties.

(3) A tribunal or chairman who reviews a decision may confirm, vary or revoke the decision. If the decision is revoked, the tribunal or chairman must order the decision to be taken again. If the original decision was taken by a chairman without a hearing, the new decision may be taken without hearing the parties. If the original decision was taken at a hearing a new hearing must be held.

Correction of decisions or reasons

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

(2) If a document is corrected by certificate under paragraph (1), or if a decision is revoked or varied under rules 35 or 38 or altered in any way by order of a superior court, the Secretary shall [alter any entry in the Register which so is affected to conform with the certificate or order and send a copy of any entry] so altered to each of the parties and, if the proceedings have been referred to the tribunal by a court, to that court.

(3) [Where a document omitted from the Register under rules 34 or 51 is corrected by certificate under this rule, the Secretary shall send a copy of the corrected document to the parties; and where there are proceedings before any superior court relating to the decision or reasons in question, he shall send a copy to that court together with a copy of the entry in the Register of the decision, if it has been altered under this rule.]

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

COSTS ORDERS

General powers to make costs orders

40.(1) Subject to paragraph (2) and in the circumstances listed in rules 41, 42 and 49 a tribunal or chairman may make an order (“a costs order”) that:

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

(2) A costs order may be made under rules 41, 42 and 49 only where the second party has been legally represented at the Hearing or, in proceedings which are determined without a Hearing, if the second party is legally represented when the proceedings are determined. If the second party has not been so legally represented a tribunal may make a preparation time order (subject to rules 44 to 47). (See rule 48 on the restriction on making a costs order and a preparation time order in the same proceedings.)

(3) For the purposes of these rules “costs” shall mean fees, charges, disbursements, or remuneration incurred by or on behalf of a party, in relation to the proceedings (including, but not limited to, expenditure on the party’s employees and legal advisers).

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

(5) In these rules legally represented means having the assistance of a person who:-

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

(6) Any costs order made under rules 41, 42 or 49 shall be payable by the first party and not his representative.

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

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

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

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

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

When a costs order must be made

^(a) 1990 c[].

41.(1) Subject to rule 40(2), a tribunal must make a costs order against a respondent where in proceedings for unfair dismissal a Hearing has been postponed or adjourned and:

- (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the Hearing; and
- (b) the postponement or adjournment of that Hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed, or of comparable or suitable employment.

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

When a costs order may be made

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

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

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

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

The amount of a costs order

43.(1) The amount of a costs order against the first party can be determined in the following ways:

- (a) the tribunal may specify the sum which the first party must pay to the second party, provided that sum does not exceed £10,000;
 - (b) the parties may agree on a sum to be paid by the first party to the second party and if they do so the costs order shall be for the sum so agreed;
 - (c) the tribunal may order the first party to pay the second party the whole or a specified part of the costs of the second party with the amount to be paid being determined by way of detailed assessment in a County Court in accordance with the Civil Procedure Rules or, in Scotland, as taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed by the order.
- (2) The tribunal shall have regard to the first party's ability to pay when considering whether it shall make a costs order or how much that order should be.
- (3) For the avoidance of doubt, the amount of a costs order made under paragraph (1)(c) may exceed £10,000.

PREPARATION TIME ORDERS

General power to make preparation time orders

44.(1) Subject to paragraph (2) and in the circumstances described in rules 45, 46 and 49 a tribunal or chairman may make an order ("a preparation time order") that:

- (a) a party ("the first party") make a payment in respect of the preparation time of another party ("the second party"); and
 - (b) the first party pay to the Secretary of State, in whole or in part, any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under section 5(2) or (3) of the Employment Tribunals Act to any person for the purposes of, or in connection with, that person's attendance at the tribunal.
- (2) A preparation time order may be made under rules 45, 46 or 49 only where the second party has not been legally represented at a Hearing or, in proceedings which are determined without a Hearing, if the second party has not been legally represented when the proceedings are determined. If the second party has been legally represented at a Hearing, a tribunal may make a costs order (subject to rules 40 to 43). (See rule 48 on the restriction on making a costs order and a preparation time order in the same proceedings.)
- (3) For the purposes of these rules preparation time shall mean time spent by:

- (a) the second party or his employees carrying out preparatory work directly relating to the proceedings; and
- (b) the second party's legal or other advisers relating to the conduct of the proceedings;

up to but not including time spent at any Hearing.

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

(5) A party may apply to the tribunal for a preparation time order to be made at any time during the proceedings. An application may be made at the end of a hearing or in writing to the Secretary. An application for preparation time which is received by the Employment Tribunal Office later than 28 days from the issuing of the judgment determining the claim shall not be accepted or considered by a tribunal or chairman.

(6) In paragraph (5) the date of issuing of the judgment determining the claim shall be either:

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

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

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

When a preparation time order must be made

45.(1) Subject to rule 44(2), a tribunal must make a preparation time order against a respondent where in proceedings for unfair dismissal a Hearing has been postponed or adjourned and:

- (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the Hearing; and
- (b) the postponement or adjournment of that Hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed, or of comparable or suitable employment.

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

When a preparation time order may be made

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

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

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

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

Calculation of a preparation time award

47.(1) In order to calculate the amount of preparation time the tribunal shall make an assessment of the number of hours spent on preparation time on the basis of:

- (a) information on time spent provided by the second party;
- (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 and with reference to, for example, matters such as the complexity of the proceedings, the number of witnesses and documentation required; or

(c) a combination of both of the above methods and information.

(2) Once the tribunal has assessed the number of hours spent on preparation time in accordance with paragraph (1), it shall calculate the amount of the award to be paid to the second party [by applying an hourly rate of £9.25] to that figure. No preparation time order made under these rules may exceed the sum of £10,000.

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

Restriction on making costs and preparation time orders

48.(1) A tribunal may not make a preparation time order and a costs order in favour of the same party in the same proceedings.

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

Costs or preparation time orders when a deposit has been taken

49.(1) When –

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

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

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

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

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

WASTED COSTS ORDERS AGAINST REPRESENTATIVES

Personal liability of representatives for costs

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

- (2) In a wasted costs order the tribunal or chairman may:
- (a) disallow, or order the representative of a party to meet the whole or part of any wasted costs of any party, including an order that the representative repay to his client any costs which have already been paid; and
 - (b) order the representative to pay to the Secretary of State, in whole or in part, any allowances (other than allowances paid to members of tribunals) paid by the Secretary of State under section 5(2) or (3) of the Employment Tribunals Act to any person for the purposes of, or in connection with, that person's attendance at the tribunal by reason of the representative's conduct of the proceedings.
- (3) "Wasted costs" means any costs incurred by a party (including the representative's own client and any party who is not legally represented):
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative; or
 - (b) which, in the light of any such act or omission occurring after they were incurred, the tribunal considers it unreasonable to expect that party to pay.

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

(5) Before making a wasted costs order, the tribunal or chairman shall give the representative a reasonable opportunity to make oral or written representations as to reasons why such an order should not be made. The tribunal or chairman shall also have regard to the representative’s ability to pay when considering whether it shall make a wasted costs order or how much that order should be.

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

(7) The Secretary shall inform the representative’s client in writing–

(a) of any proceedings under this rule; or

(b) of any order made under this rule against the party’s representative.

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

POWERS IN RELATION TO SPECIFIC TYPES OF PROCEEDINGS

[Sexual offences and the Register]

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

Restricted reporting orders

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

(a) any case which involves allegations of sexual misconduct;

(b) a complaint under section 8 of the Disability Discrimination Act in which evidence of a personal nature is likely to be heard by the tribunal or a chairman.

(2) A party may apply for a restricted reporting order (either temporary or full) in writing to the Employment Tribunal Office, or orally at a hearing, or the tribunal or

chairman may make the order on their own initiative without any application having been made.

(3) A chairman or tribunal may make a temporary restricted reporting order without holding a hearing.

(4) Where a temporary restricted reporting order has been made the Secretary shall inform all parties to the proceedings of that fact in writing as soon as possible. The parties shall also be informed by the Secretary of their right to apply to have the temporary restricted reporting order revoked or converted into a full restricted reporting order within 14 days of the temporary order having been made. If no such application is made within that period, the temporary restricted reporting order shall lapse and cease to have any effect on the fifteenth day after it was made. When such an application is made the temporary restricted reporting order shall continue to have effect until the pre-hearing review or Hearing at which the application is considered.

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

(6) Where a tribunal or chairman makes a restricted reporting order –

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

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

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

(9) For the purposes of this rule “issuing” the judgment occurs on the date recorded as being the date on which the document recording the determination of the claim was sent to the parties, and references to a restricted reporting order include references to both a temporary and a full restricted reporting order.

Proceedings involving the National Insurance Fund

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

Collective agreements

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

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

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

Employment Agencies Act 1973

55. In relation to any claim in respect of an application under section 3C of the Employment Agencies Act 1973^(a) for the variation or revocation of a prohibition order, the Secretary of State shall be treated as the respondent in such proceedings for the purposes of these rules. In relation to such an application the claim does not need to include the name and address of the persons against whom the claim is being made.

Crown employment proceedings

56.(1) A Minister of the Crown (whether or not he is a party to the proceedings) may, if he considers it expedient in the interests of national security, direct a tribunal or chairman by notice to the Secretary to-

^(a) 1986 c.[].

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

- (a) conduct proceedings in private for all or part of particular Crown employment proceedings;
- (b) exclude the claimant from all or part of particular Crown employment proceedings;
- (c) exclude the claimant's representatives from all or part of particular Crown employment proceedings;
- (d) take steps to conceal the identity of a particular witness in particular Crown employment proceedings.

(2) A tribunal or chairman may, if it or he considers it expedient in the interests of national security, by order -

- (a) do anything which can be required by direction to be done under paragraph (1);
- (b) direct any person to whom any document (including any judgment or record of the proceedings) has been provided for the purposes of the proceedings not to disclose any such document or the content thereof to—
 - (i) any excluded person,
 - (ii) in any case in which a direction has been given under paragraph (1)(a) or an order has been made under paragraph (2)(a) read with paragraph (1)(a), to any person excluded from all or part of the proceedings by virtue of such direction or order, or
 - (iii) in any case in which a Minister of the Crown has informed the Secretary in accordance with paragraph (3) that he wishes to address the tribunal or chairman with a view to an order being made under paragraph (2)(a) read with paragraph (1)(b) or (c), to any person who may be excluded from all or part of the proceedings by virtue of such an order, if an order is made, at any time before the tribunal or chairman decides whether or not to make such an order;
- (c) take steps to keep secret all or part of the reasons for its judgment.

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

(3) In any proceedings in which a Minister of the Crown considers that it would be appropriate for a tribunal or chairman to make an order as referred to in paragraph (2), he shall (whether or not he is a party to the proceedings) be entitled to appear before and to

address the tribunal or chairman thereon. The Minister shall inform the Secretary by notice that he wishes to address the tribunal or chairman and the Secretary shall copy the notice to the parties.

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

Dismissals in connection with industrial action

57.(1) In relation to a complaint under section 111 of the Employment Rights Act 1996 (unfair dismissal: complaint to employment tribunal) that a dismissal is unfair by virtue of section 238A of TULR(C)A^(a) (participation in official industrial action) a tribunal or chairman may adjourn the proceedings where specified civil proceedings have been brought until such time as interlocutory proceedings arising out of the specified civil proceedings have been concluded.

(2) In this rule -

“specified civil proceedings” means legal proceedings brought by any person against another person in which it is to be determined whether an act of that other person, which induced the claimant to commit an act, or each of a series of acts, is by virtue of section 219 of TULR(C)A not actionable in tort or in delict; and

the interlocutory proceedings shall not be regarded as having concluded until all rights of appeal have been exhausted or the time for instituting any appeal in the course of the interlocutory proceedings has expired.

Devolution issues

58.(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^(a) arises, the Secretary shall as soon as reasonably practicable by notice inform the Advocate General for Scotland and the Lord Advocate thereof (unless they are a party to the proceedings) and shall at the same time -

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

(2) In any proceedings in which a devolution issue within the definition of the term in paragraph 1 of Schedule 8 to the Government of Wales 1998^(b) arises, the Secretary shall as soon as reasonably practicable by notice inform the Attorney General and the National

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

^(a) 1998 c.46.

^(b) 1998 c.38.

Assembly for Wales thereof (unless they are a party to the proceedings) and shall at the same time -

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

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

Transfer of proceedings between Scotland and England and Wales

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

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

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

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

References to the European Court of Justice

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

Transfer of proceedings from a court

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

GENERAL PROVISIONS

Powers

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

(2) A tribunal may at a Hearing make any order or direction which a chairman has power to make under these rules, subject to compliance with any relevant notice [or other procedural] requirements.

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

Notices, etc

63.(1) Any notice given or document sent under these rules shall be in writing and may be given or sent –

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

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

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

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

(4) A claim may be presented at any Employment Tribunal Office.

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

- (a) in the case of a notice or document directed to the Secretary of State in proceedings to which she is not a party and which are brought under section 170 of the Employment Rights Act, the offices of the Redundancy Payments Directorate of the Insolvency Service at PO Box 203, 21 Bloomsbury Street, London WC1B 3QW, or such other office as may be notified by the Secretary of State;
- (b) in the case of any other notice or document directed to the Secretary of State in proceedings to which she is not a party (or in respect of which she is treated as a party for the purposes of these rules by rule 53), the offices of the Department of Trade and Industry (Employment Relations Directorate) at 1 Victoria Street, London, SW1H 0ET, or such other office as be notified by the Secretary of State.
- (c) in the case of a notice or document directed to the Attorney General under rule 58, the Attorney General's Chambers, 9 Buckingham Gate, London, SW1E 7JP;
- (d) in the case of a notice or document directed to the National Assembly for Wales under rule 58, the Counsel General to the National Assembly for Wales, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ;
- (e) in the case of a notice or document directed to the Advocate General for Scotland under rule 58, the Office of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh, EH6 6QQ;
- (f) in the case of a notice or document directed to the Lord Advocate under rule 58, the Legal Secretariat to the Lord Advocate, 25 Chambers Street, Edinburgh, EH1 1LA;
- (g) in the case of a notice or document directed to a court, the office of the clerk of the court;
- (h) in the case of a notice or document directed to a party –
 - (i) the address specified in the claim or response to which notices and documents are to be sent, or in a notice under paragraph (5), or

- (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom or, if the party is a corporate body, the body's registered or principal office in the United Kingdom, or, in any case, such address or place outside the United Kingdom as the President, Vice President or a Regional Chairman may allow;
- (i) in the case of a notice or document directed to any person (other than a person specified in the foregoing provisions of this paragraph), his address or place of business in the United Kingdom or, if the person is a corporate body, the body's registered or principal office in the United Kingdom;

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

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

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

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

(9) Copies of every document and copy entry sent to the parties under rules 32(4) or 34 shall -

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