

This consultation document seeks views on new draft Employment Tribunal Regulations and Rules¹. The primary purpose of the changes that are being proposed is to implement the Tribunal reform provisions of the Employment Act 2002. They also act upon some recommendations made by the Employment Tribunal System Taskforce. In addition, the opportunity has been taken to improve the structure of the legislation and recast it in more “plain English” terms to improve its user-friendliness.

Some of the revisions are designed to dovetail with provisions being introduced separately by the Government in new dispute resolution regulations, on which public consultation was carried out from July to October 2003. The dispute resolution regulations are expected to be placed before Parliament shortly, and are designed to promote dialogue between employees and employers in the workplace when disputes arise. However, where workplace discussion fails, the Employment Tribunals – supported by the conciliation work of the Advisory Conciliation and Arbitration Service (Acas) – provide an independent judicial forum for determining the parties’ rights and obligations. The Government considers it essential that the Tribunals should function in an efficient and streamlined manner. The Employment Tribunals will in due course form part of the new unified tribunal system announced by the former Lord Chancellor in March, which will be established over the next few years.

A wide spectrum of stakeholders have helped to shape the proposed changes to the Employment Tribunal Regulations and Rules, through a process of discussion and pre-consultation prior to this more formal public consultation. The Government now wishes to canvass views on the workability and acceptability of the revised Regulations to all those who may have cause to use the system and their representative bodies. The Government will carefully consider all responses to this consultation document before deciding upon the final form of the revised Regulations. The intention is that the revised Regulations should be placed before Parliament in the spring of 2004 to come into effect on 1 October 2004.

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Respond by 5 March 2004
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¹ The Rules are contained in Schedule 1 to the Regulations. Proposed revisions to Schedule 3 will be the subject of a separate public consultation shortly. There are no substantive changes planned to be made to the other Schedules, and these do not therefore form part of the consultation.

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Executive summary

Changes to the Employment Tribunal procedures are being made to improve the service provided. The changes arise from provisions of the Employment Act 2002, from recommendations of the Employment Tribunal System Taskforce, and from suggestions offered by the Employment Tribunal Presidents (for England and Wales and for Scotland) to help make the system run more smoothly.

The key reforms proposed are as follows.

- The Rules of Procedure are to be recast so that they follow a more logical structure and are expressed in more “plain English” terms, in order to make the system easier to use. This change will be complemented by the introduction of standard claim and response forms, the use of which will become mandatory from April 2005. These forms – on which there will be a separate public consultation – will seek fuller information “up front”, to assist the parties, and the tribunal, in understanding cases.
- The circumstances in which a respondent may gain an extension of time for submitting a response form (the new, plain English term for what is currently referred to as a notice of appearance) are to be more tightly specified.
- There will be new pre-acceptance procedures to “sift out” claims and responses that (for one or more of a number of specified reasons) should not go forward.
- Acas’s duty to conciliate is to be limited to a fixed period in most cases, to encourage parties to settle in good time rather than just before the Tribunal hearing. This fixed period will be either a short 7 week period or a standard 13 week period, depending on what the case is about. However, in discrimination cases, which tend to be particularly complex, Acas’s duty to conciliate will remain unlimited in time.
- Where a case is uncontested, the Tribunal will in future usually issue a default judgment against the respondent without holding a hearing.
- Powers are to be provided for the Employment Tribunal Presidents to issue practice directions to ensure that a consistent approach is adopted to procedural issues.
- Explicit provision is to be made for cases to be struck out at a pre-hearing review, but only within the grounds on which Tribunals may currently strike out claims or responses outside such a review. (Such grounds include failure to comply with an order or direction, or the inclusion in the claim form or response form of anything scandalous, unreasonable or vexatious or conducting the proceedings in such a manner.)

- Two substantial changes are to be made to the present costs rules: (i) there will be a new provision for awards in respect of preparation time in some circumstances; and (ii) it will be possible for representatives (except not-for-profit representatives) to incur a costs award on account of their own conduct.
- The Rules will apply to the whole of Great Britain, replacing the current separate, but essentially equivalent, Rules for England & Wales and Scotland.

In preparing the draft revised Regulations, DTI has been working closely with the judicial Presidents, the Employment Tribunals Service and Acas. Representatives of businesses and the trade unions have also been involved in preliminary consultation.

Following this public consultation, it is intended that revised Regulations will be laid before Parliament in spring 2004 and come into force on 1 October 2004.

The draft provisions take account of, and dovetail with, the new dispute resolution regulations being introduced by the Government to encourage settlements in the workplace before the Tribunal stage is reached. These regulations were the subject of formal public consultation between July and October 2003. That consultation document can be found at: www.dti.gov.uk/er/individual/dis_res_consdoc.htm.

The draft Regulations include provisions for introducing a fixed period for Acas conciliation in employment tribunal cases. The Regulations lay down conditions for conciliation during the fixed period, but leave it to Acas to decide in what circumstances conciliation might take place after the fixed period has ended. Acas has issued a parallel consultation document explaining its proposed policy on conciliating outside the fixed period and inviting comments. The document is available on the Acas website www.acas.org.uk.

The Government also intends to streamline the complex rules of procedure relating to equal value Tribunal cases. It will be consulting on new rules to replace those that are set out in Schedule 3 of the Employment Tribunals Regulations 2001. The intention is to bring these changes into effect at the same time as the new Employment Tribunal Regulations and principal Rules of Procedure set out in Schedule 1 (and the subject of the present consultation). Further details can be obtained from the Women and Equality Unit: www.womenandequalityunit.gov.uk.

Questions for consultation

Views are welcomed on any aspects of the draft Regulations and in particular on the following issues:

Re-structuring and re-writing of the new regulations in “plain English”

- Question 1 Do you support the recasting of the Rules of Procedure in easier-to-follow, more plain English terms?
- Question 2 Would you prefer the term “respondent” to be retained, or the term “defendant” (or the Scottish equivalent “defender”) to be substituted for the party (usually the employer) responding to a Tribunal claim?

The Pre-Acceptance Procedure for Employment Tribunal Claims

- Question 3 Are the issues in the list in draft Rule 3(2) appropriate for consideration under the proposed new pre-acceptance procedure for claims?
- Question 4 Are there any items that ought to be added to the list of issues for consideration at the pre-acceptance stage, either for claims – draft Rule 3(2) – or responses – draft Rule 7(2)?

The Fixed Period for Acas Conciliation

- Question 5 Are the proposed distinctions between the three categories of fixed period cases sensibly drawn? If not, what are your specific points of criticism/proposals for improvement?
- Question 6 Are 7 weeks and 13 weeks appropriate durations for, respectively, the short and standard fixed conciliation periods? If not, what durations should those periods have?

Employment Tribunal Forms

- Question 7 Is it appropriate for the claimant to be required to give the items of information listed in Rule 1(3)? Are there any items that ought to be added, or deleted?
- Question 8 Is it appropriate for the respondent to be required to give the items of information listed in Rule 5(3)? Are there any items that ought to be added, or deleted?

Time limit for a respondent to reply to a claim

- Question 9 Is 23 days from the date when a copy of the claim is sent to the respondent an appropriate time limit for entering a response? If not, what would be an appropriate time limit, and why?
- Question 10 Is it appropriate that the time limit for entering a response should be extended only where such an extension is judged just and equitable in the circumstances?

Determinations without a hearing (default judgments)

- Question 11 Are the circumstances in which it is proposed that a Tribunal should be able to make a default judgment the most appropriate ones? If not, what should those circumstances be?
- Question 12 Are the provisions for reviewing a default judgment appropriate? If not, how should they be changed?

Types of hearing

- Question 13 Is the proposed new framework for types of hearings likely to be an improvement on the present position? This new framework consists of case management discussions and pre-hearing reviews conducted by a chairman sitting alone, followed where necessary by a full Hearing conducted by a Tribunal.
- Question 14 Are there any changes that ought to be made to this framework? If so, what changes could be made?

Costs and preparation time awards

- Question 15 Are there any changes that ought to be made to the provisions relating to wasted costs orders and/or preparation time awards?

The Public Register

- Question 16 Should the Public Register of Tribunal applications continue unchanged? If not, which of the options discussed should be pursued? Are there any other options that ought to be considered?

The Government would welcome your replies to these questions and any other comments on the draft Regulations. These should be sent by **Friday 5 March 2004** to:

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Chapter 1 – Introduction

1. The Government intends to introduce revised Employment Tribunal Regulations, with revised Rules of Procedure, to come into force on 1 October 2004. The aim of the revisions – which, amongst other things, implement provisions of the Employment Act 2002 – is to modernise and streamline practices in order to promote the early settlement of cases through Acas conciliation and, where such conciliation fails, to expedite the passage of cases through the Tribunal system. The revisions are designed to deliver a better service and swifter justice for all.
2. The new legislation will be accompanied by the introduction of new Tribunal forms for use by claimants and respondents. These are to be the subject of a separate public consultation – details can be obtained from the Employment Tribunals Service. The new forms will be introduced in the autumn of 2004, and their use will become compulsory from April 2005. New guidance will also be provided to assist parties in the completion of the forms and in other aspects of bringing or contesting Tribunal claims.

Background

3. Initial proposals for Employment Tribunal reform were set out in the 2001 consultation paper *Routes to Resolution*. The Government announced in its response to the outcome of that consultation that it would take forward a number of measures designed to enable the Employment Tribunal system to work more smoothly and efficiently, while encouraging settlement of disputes through Acas with new fixed conciliation periods.
4. The key elements of the proposed reform of the Tribunal system were subsequently laid out in primary legislation, forming part of the Employment Act 2002², which received Royal Assent on 8 July 2002. The Act set out the basic legislative framework for the proposed reforms, the detailed application of which will be specified in revised Employment Tribunal Regulations and Rules of Procedure. This consultation document presents and seeks views on a draft of the revised provisions. The revisions, as well as implementing aspects of the Employment Act 2002, will meet a number of recommendations of the Employment Tribunal System Taskforce, which reported in July 2002. In addition, the opportunity has been taken to recast the Rules of Procedure in more user-friendly, plain English terms, and to combine the previously separate sets for England & Wales and Scotland into a single set covering the whole of Great Britain.
5. Other provisions of the Employment Act 2002 set minimum standards for employers and employees to meet in addressing disciplinary issues and grievances in the workplace. Public consultation on the draft implementing

² Information on the Employment Act 2002 is available at <http://www.dti.gov.uk/er/employ/index.htm>.

regulations for those provisions concluded on 29 October 2003. The intention is that the dispute resolution regulations will be placed before Parliament shortly and come into effect on 1 October 2004. It is intended that the new Employment Tribunal Regulations will come into force at the same time. The two sets of provisions are intended to “dovetail” with each other. The dispute resolution regulations will have a bearing on the handling of most Employment Tribunal claims – for example they result in the introduction of specified conditions that must be met before a claim can be admitted, and they make provision for the normal time limits for claims to be extended by three months in most cases. The dispute resolution consultation document and draft regulations are at: http://www.dti.gov.uk/er/individual/dis_res_consdoc.htm. The Employment Appeal Tribunal rules will also be revised, with the new provisions to come into effect on 1 October 2004.

Testing proposals with stakeholders

6. In drafting the revised provisions, DTI has taken careful note of views expressed by the Tribunal Presidents and other judiciary, the Employment Tribunals Service, which administers the system, and Acas, providers of the conciliation service designed to facilitate settlements. A preliminary, small-scale consultation has also been held with the Tribunal judiciary and a range of organisations representing employers and employees and governmental organisations (see annex D). Responses to that initial consultation have also been carefully considered and taken into account in the preparation of the draft revised Regulations attached to this document.

7. The Government has, in addition, tested its plans at the “grass-roots” levels. Focus groups have been held, including with small firms representatives, and views have been welcomed on the proposed changes. Further meetings have been held with the Small Business Council and the TUC. The Small Business Service and the DTI’s Better Regulation Unit have also been kept fully informed of progress.

8. In good time before the revised Regulations come into force, new guidance will be provided on how to make and respond to claims, how to complete the new prescribed forms, and how the new conciliation arrangements will work. This guidance will also explain the new admissibility rules, whereby claims will not be accepted into the Tribunal system unless the claimant has provided certain required information and has met, in cases where it applies, a new obligation to raise a grievance with his or her employer in the workplace first.

9. An assessment has been made of the costs and benefits of the proposed changes to the Employment Tribunal Regulations. The partial Regulatory Impact Assessment (see Annex B) indicates that, in the longer term, benefits to employers will be about £2.4 - 4.9 million per annum and net benefits to the Exchequer will be £1.5 - 3.3 million per annum. These savings will flow from an anticipated reduction in the number of disputes that proceed to a Tribunal hearing before being resolved and in increases in the efficiency of the Tribunal system as a whole. There will be initial familiarisation costs to the Exchequer of about £723,000.

Consultation

10. Public consultation on these draft Regulations will last for 12 weeks. It is being aimed primarily at those who may, at some time, have cause to use the Tribunal system in the resolution of a workplace dispute. This includes employers, employees, and the organisations that support and advise them, as well as legal practitioners and other bodies with an interest in employment law and its implementation. Views from all these constituencies would be welcomed.

11. This consultation document is available on request in Welsh and alternative formats. See Chapter 4 for more details.

Next steps

12. Once the consultation exercise is complete, the Government will analyse replies, and publish an overall response to the consultation in due course. It is anticipated that the revised Regulations will be laid before Parliament in the spring of 2004. Subject to Parliamentary approval, they will come into force on 1 October 2004, as part of a coherent package of changes with the new dispute resolution regulations and new Employment Appeal Tribunal rules.

Other information

13. A wide range of information, including this consultation document and the associated draft revised legislation, is available on the DTI website at www.dti.gov.uk/er/hot_topics.htm. The website can be used to access other publications such as the *Routes to Resolution* paper, the dispute resolution regulations consultation document, and guidance for employers, employees and other interested parties on many aspects of the employment rights legislation. There will also be links to other forthcoming consultations that will affect the legislative framework for dispute resolution. These include the consultation on the new Tribunal claim and response forms (due to be conducted to a similar timescale to this consultation), and that on the revised Acas Code of Practice on Disciplinary and Grievance Procedures (to be published early 2004).

Submitting your comments

14. We welcome your replies to these questions and any other comments on the draft Regulations. These should be sent via post, email or fax by **Friday 5 March 2004** to:

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15. Comments received as part of this consultation may be made publicly available in whole or in part at the Department's discretion. If you wish all or part of your response (including your identity) to be kept confidential, you must indicate this explicitly in your response. Where confidentiality is not requested, responses may be made available to any enquirers, including from outside the UK, or published by any means, including on the internet.

Chapter 2 – Proposed revisions to the Employment Tribunal Regulations and Rules of Procedure

16. **The Government would welcome views on the revisions it plans to make to the Employment Tribunal Regulations and Rules of Procedure, as reflected in the attached draft. A series of sixteen questions feature throughout this document to facilitate the submission of consultee views.**

Terminology

17. The opportunity is being taken, in this revision of the Regulations, to recast the Rules of Procedure (Schedule 1 to the Regulations) in simpler, more comprehensible English, removing some of the more arcane language present in the existing version and replacing it with more user-friendly terminology. There is however one aspect of the new terminology on which the Government is specifically seeking views at this stage. This is as follows.

18. Currently, the term “respondent” is used to describe the employer responding to a claim. This has been retained in the attached draft of the revised Rules. However, the Tribunal Presidents are concerned that, at present, many employers – particularly unrepresented employers and those in small firms – fail to treat claims with sufficient seriousness, because they do not realise that an Employment Tribunal is a court of law. This can have adverse consequences for the employers concerned, because it may mean that they do not understand the importance of the need to respond rapidly and are thus at serious risk of having their rights prejudiced. In the light of this, the Presidents are strongly of the view that the term used to describe an employer responding to a claim should be changed from “respondent” to “defendant”. The justification for making such a change would be that the term “defendant” is familiar from the context of the civil courts, including for instance small claims courts (although in Scotland the term “defender” is used instead), and would make the position clearer and help to focus employers’ minds.

19. The President of the Employment Appeal Tribunal also strongly feels that such a change would be beneficial. It would have the added advantage of avoiding potential confusion in appeals, where the party responding to the appeal (who may have been the claimant in the Employment Tribunal) is referred to as the respondent (and the party bringing the appeal is referred to as the appellant).

20. The Government understands these argument, but is aware from discussions with representative organisations and others that some employers may perceive the term “defendant” as being more pejorative than “respondent”, and may therefore object to having this term applied to them in claims arising from employment relations disputes. It wonders if the problem

identified by the Tribunal Presidents might not be better addressed by way of improved guidance to employers.

Question 1: Do you support the recasting of the Rules of Procedure in easier-to-follow, more plain English terms?

Question 2: Would you prefer the term “respondent” to be retained, or the term “defendant” (or the Scottish equivalent “defender”) to be substituted for the party (usually the employer) responding to a Tribunal claim?

21. The remainder of this document will focus not on the presentational changes that have been made to the Regulations to improve their user-friendliness (although it will use the new terminology – e.g. “claimant” instead of “applicant” – throughout), but on the substantive changes that the Government intends to make.

Detailed description of revisions

Pre-acceptance procedure

22. A new pre-acceptance procedure will supersede the procedure set out in Rule 1(3) of the current Rules.

23. Under the new procedure, claims (the new term to be used for originating applications) will not be accepted – i.e. will not be served on the prospective respondent or go forward for consideration on their merits – if one or more of the following circumstances, listed in Rule 3(2) of the draft Rules, appears to apply:

- the prospective claimant has failed to give certain basic required information specified in the Rules;
- if a time limit applies to the claim, the Tribunal has no power to extend that time limit and the claim has not been presented within that time limit;
- the prospective claimant does not qualify for the right he/she is seeking to assert (e.g. does not have one year’s continuous service in an ordinary unfair dismissal case);
- the application relates to a complaint that the tribunal has no jurisdiction to determine (e.g. a complaint about a noisy neighbour);
- the application is inadmissible under section 32 of the Employment Act 2002 – the new admissibility conditions under the statutory minimum grievance procedures;
- the prescribed form has not been used (applies only after 6 April 2005 – see section headed “Employment Tribunal Forms”).

24. Claims that appear to the Tribunal staff to fall into this category will – with one exception – be put to a Tribunal Chairman, who will take a judicial decision as to whether or not, according to these criteria, they can be accepted. The exception is that after April 2005, purported claims that are not on the prescribed form will be rejected by administrative staff without

reference to a Chairman, unless the claim also falls within one of the other circumstances above, in which case it will be referred to a Chairman.

25. The Chairman will be able to invite the claimant to a pre-acceptance hearing if he or she considers this necessary to decide whether or not the claim can be accepted. The prospective respondent will not normally be involved at the pre-acceptance stage.

26. Responses (the new term to be used for notices of appearance) will also be required to pass through a pre-acceptance procedure, and will not be accepted if they omit any of the required information or if they have been entered out of time (see below). This is dealt with at Rule 7(2) of the draft Rules.

Question 3: Are the issues in the list in draft Rule 3(2) appropriate for consideration under the proposed new pre-acceptance procedure for claims?

Question 4: Are there any items that ought to be added to the list of issues for consideration at the pre-acceptance stage, either for claims – draft Rule 3(2) – or responses – draft Rule 7(2)?

Fixed period for Acas conciliation

The present position

27. Acas at present has a duty to continue to seek a conciliated settlement for as long as the two parties to the dispute want to carry on. This can lead to an Acas-brokered settlement being reached at the very last moment before the case comes to a Tribunal hearing. This prolonged process can cost time and money to all concerned, including the Tribunals.

The new measures

28. To encourage early conciliated settlements, new rules have been drafted to introduce a fixed period of conciliation. It will not be permissible for a Tribunal hearing to take place during the fixed period (although a case management discussion and/or a pre-hearing review – see below – may still be held). The Tribunal will still have the ability to fix a date for a Hearing as long as the Hearing itself does not actually take place during the fixed conciliation period. There are to be three categories of cases for fixed period purposes:

- Cases where no fixed period is to apply – i.e. cases in which Acas will have an ongoing duty to conciliate, unlimited in terms of time, right up to the hearing. This category will consist of all cases in which the claim (or, in a multi-jurisdiction case, one or more aspects of the claim) is brought under the Sex Discrimination Act, the Equal Pay Act, the Race Relations Act, the Disability Discrimination Act or the 2003 regulations on equality in relation to sexual orientation or religion or belief. The reason for this is

that cases brought under these jurisdictions tend to be inherently complex, making a fixed period of conciliation inappropriate.

- Cases where a seven week fixed period (the short conciliation period) is to apply. This category will consist of claims relating to unauthorised deductions from wages (including holiday pay), breach of contract, statutory redundancy payment (where the employer is the respondent), unpaid guarantee pay and unpaid medical suspension pay. The intention is that these claims will be listed on a “fast track” basis, for a short hearing soon after the end of the seven week period. The reason for this is that, where “pure money” claims of this kind are concerned, the facts are often not in dispute and the case can be disposed of quickly, ensuring swift access to justice. There will however be provision for a chairman to make an order converting a short, seven week fixed period case into a standard, thirteen week fixed period case (see below) if this is warranted by the complexity of the proceedings in any particular instance.
- Cases where a thirteen week fixed period (the standard conciliation period) is to apply. This category will consist of all claims not falling within either of the two categories above.

29. Where a fixed period applies, it will start on the date when the claim is sent to the respondent. In some circumstances, the fixed period may come to an end early. The main examples will be where a case is uncontested, i.e. the respondent puts in no response to the claim (see section on default judgments); where Acas conclude – normally where one or more of the parties is unwilling to cooperate with the process – that there is no realistic prospect of conciliation succeeding; or where the claim is settled. The new Rules will also allow for a two week extension to the standard, thirteen week fixed period – but only in cases where a serious settlement proposal is under active consideration and is likely to be agreed within the two week extension, and Acas consider that these conditions are met.

30. In any instance where a case is stayed, the “clock will stop” on the fixed period. It will restart when the stay ends. Acas will continue to have a duty to conciliate throughout the period of the stay.

31. Once the fixed period is over (in a case where it applies), Acas will continue to have a power (as distinct from a duty) to conciliate. Acas will be applying their own strict criteria to the exercise of this power.

Question 5: Are the proposed distinctions between the three categories of fixed period cases sensibly drawn? If not, what are your specific points of criticism/proposals for improvement?

Question 6: Are 7 weeks and 13 weeks appropriate durations for, respectively, the short and standard fixed conciliation periods? If not, what durations should those periods have?

Employment Tribunal forms

32. The Employment Act 2002 allows the Secretary of State, through the Employment Tribunal procedure Regulations, to prescribe the forms to be used by a claimant to initiate a tribunal claim and by the respondent to reply to it. The draft Regulations implement this provision. The intention is that forms will be prescribed on 1 October 2004, at the same time as the new Regulations come into effect, and that their use will become obligatory (subject to certain exceptions) from 6 April 2005.

33. Claimants and respondents will in future be required to give certain additional information when making or (as the case may be) responding to a claim. The required information is specified in Rule 1(3) of the draft Rules for the claimant and in Rule 5(3) for the respondent. There will be questions included on the relevant prescribed forms with a view to eliciting this information (as well as other, non-mandatory information, as at present). The intention is to ensure that the parties, and the Tribunal itself, have more information about cases at the outset. It is hoped that this will also promote more settlements without the need for a hearing. In addition, it will enable Tribunal staff and, if necessary, a chairman to form a view at the new pre-acceptance stage (see above) as to whether or not the claimant has met the admissibility conditions established in section 32 of the Employment Act 2002 (part of the new dispute resolution measures), where these apply.

Question 7: Is it appropriate for the claimant to be required to give the items of information listed in Rule 1(3)? Are there any items that ought to be added, or deleted?

Question 8: Is it appropriate for the respondent to be required to give the items of information listed in Rule 5(3)? Are there any items that ought to be added, or deleted?

Time limit for a respondent to reply to a claim

34. At present, the time limit for a respondent to submit a response to a claim (currently termed a notice of appearance) is 21 days from the date when the respondent receives a copy of the claim from the Tribunal office. Under the new Rules, it is proposed that it will be 23 days from the date when a copy of the claim is sent to the respondent by the Tribunal office. This change is designed to provide greater certainty as to the date from which the period runs – given that the date when the claim is sent by the Tribunal office is a matter of record – but at the same time to ensure that, in most cases, the respondent still has 21 days in which to enter a response (allowing 2 days for the claim to reach the respondent in the post).

35. In future, however, no extension of the period for submitting a response will be permitted *unless* the respondent, during the course of the 23 day period itself, applies for such an extension, and a chairman decides that it would be just and equitable in the circumstances to grant one. This contrasts with the position under the current Rules, where there is a much wider discretion to allow extensions. If no response (meeting the pre-acceptance

conditions) has been received by the end of the 23 day period (or any extended period granted in response to an application made during the 23 day period), the Tribunal will regard the case as uncontested and issue a default judgment against the respondent (see below). The fixed period of conciliation (if one applies) will end.

36. It should be noted that although the time limit for entering a response is much shorter than the time limit for making a claim, the employer will know that a response is needed from the time the case papers are received. In most cases, he/she will also – by virtue of the new dispute resolution regulations due to come into effect on 1 October 2004 – be assured of having prior written notice from the employee of any grievance that might give rise to a claim, and an interval of at least 28 days in which to try to resolve that grievance in the workplace before the claim is actually made.

Question 9: Is 23 days from the date when a copy of the claim is sent to the respondent an appropriate time limit for entering a response? If not, what would be an appropriate time limit, and why?

Question 10: Is it appropriate that the time limit for entering a response should be extended only where such an extension is judged just and equitable in the circumstances?

Default judgments

37. Provision was made in the Employment Act 2002 for Tribunals to be allowed to determine a case without a hearing – i.e. give a default judgment – in specified circumstances. Under the draft Rules, *unless* the claimant has informed the Tribunal office in writing that he/she wishes to have a hearing regardless, a Tribunal will be able to give a default judgment in any case that is uncontested (see above). The default judgment may cover liability only, or both liability and remedy. It will however be open to the Tribunal to have a hearing (with the claimant as the only party involved) if it considers this necessary in order properly to decide the case. There will be no provision for default judgments in contested cases.

38. Either party will be able to seek to have the default judgment overturned by making an application for review. If the application for review is made by the respondent, it will be granted only if he/she also presents his/her proposed response and an application for an extension of time for putting in a response, which will be considered according to the standard “just and equitable” test (see above). The default judgment may be revoked or varied if the chairman subsequently conducting the review considers that the respondent has a reasonable prospect of successfully responding to the claim, or it appears that there is some other good reason why it should be revoked or varied or the respondent should be allowed to resist the claim.

39. It will also be open to either party to appeal against a default judgment.

Question 11: Are the circumstances in which it is proposed that a Tribunal should be able to make a default judgment the most appropriate ones? If not, what should those circumstances be?

Question 12: Are the provisions for reviewing a default judgment appropriate? If not, how should they be changed?

Practice directions

40. At present, Employment Tribunal Presidents have no power to issue practice directions – i.e. directions making provision as to matters of Tribunal practice and procedure – and, as a result, these may differ between regions. The new Regulations will introduce such a power. This will enable the Presidents to ensure that a consistent approach is adopted to procedural issues. Practice directions may also direct the parties to proceedings to comply with certain procedural requirements.

Types of hearing

Case management discussions

41. The new Rules will provide for a chairman to hold a case management discussion, where appropriate, to consider and make directions in relation to procedural (sometimes referred to as “interlocutory”) matters. The purpose of such a discussion will be to promote the efficient handling of the case. The discussion will be held in private, and will not deal with the substantive merits of the case. It will not be possible for a case to be struck out or otherwise decided at a case management discussion.

42. These discussions will replace interlocutory hearings under the current system.

Pre-hearing reviews

The present position

43. Tribunals may hold a pre-hearing review at which they are entitled to require a deposit of up to £500 before allowing a party with a weak case to proceed to a full hearing. Although the current rules permit certain cases to be struck out at a full hearing, it is unclear whether or not they allow a Tribunal to strike out hopeless cases at a pre-hearing review.

The new measures

44. The Employment Act 2002 enables cases to be struck out at a pre-hearing review, but only within the grounds on which tribunals may currently strike out claims or replies at a full hearing. Such grounds include failure to

comply with an order or direction or when the claim or reply (or anything in it) or the way in which the proceedings have been conducted is scandalous, has no reasonable prospect of success or is vexatious.

45. Examples of the types of case in which it could be appropriate to strike out include:

- those where the facts have already been litigated and there is no fresh evidence;
- cases in which the facts are not in dispute but one party is clearly putting a wrong interpretation on them;
- cases where the application is not sufficient to lead to a successful outcome and the party has stated that no further evidence or witnesses would be called later in the proceedings.

46. Pre-hearing reviews will also deal with other substantive issues such as matters that are dealt with at present in preliminary hearings. They will be conducted by chairmen sitting alone.

Full Hearings

47. Any matters not already disposed of will be determined by a Tribunal in a full Hearing.

Question 13: Is the proposed new framework for types of hearings likely to be an improvement on the present position? This new framework consists of case management discussions and pre-hearing reviews conducted by a chairman sitting alone, followed where necessary by a full Hearing conducted by a Tribunal.

Questions 14: Are there any changes that ought to be made to this framework? If so, what changes could be made?

Costs and preparation time awards

48. The Employment Act 2002 makes two significant changes to the present costs rules. First, it provides that representatives can themselves incur a “wasted costs” order on account of their own unreasonable conduct. Secondly, it introduces a new provision for “preparation time” awards. The implementation of each of these measures is discussed in turn below.

49. Additionally, the Act makes express provision for the Rules to enable Tribunals to take into account a party’s ability to pay. See draft Rules 43(2), 47(3) and 50(5).

Wasted costs orders against representatives

50. The making of costs orders against representatives will be limited to cases where the representatives are paid (including those working on a contingency fee basis). It will not extend to representatives in the “not for profit” sector (including trade union representatives acting on a “not for profit”

basis), on whom many claimants rely. The intention is to encourage all parties to a case to act responsibly, but to recognise disparity in the resources of paid representatives and their companies, and representatives who do not charge for their services

51. A wasted costs order may disallow, or order the representative to meet or repay, the whole or part of any wasted costs of any party, including the representative's own client.

52. In order to incur a wasted costs order, a representative would have to have acted improperly, unreasonably or negligently.

Preparation time awards

53. The current Rule 14(1) sets out the circumstances that can provoke a costs award. It is intended that "preparation time" awards may be made only in the same circumstances, that is, in general, where the bringing or conducting of the proceedings by a party has been misconceived, or the party or his/her representative has behaved vexatiously, abusively, disruptively or otherwise unreasonably.

54. Costs awards will – as at present – primarily cover legal costs for parties who are legally represented at the stage when the case is determined. Preparation time awards, by contrast, will cover time spent preparing for a case for parties who are not legally represented at the stage when the case is determined and who, under current legislation, are not entitled to received a costs award. They will include preparation time spent by advisers (legally-qualified or otherwise) to such parties. These awards will not be assessed by a precise calculation of loss, but certain matters will have to be taken into account and a fixed hourly rate used – see draft Rule 47. The fixed hourly rate is drawn from similar provisions relating to litigants in person in the civil courts. It will not be possible for both a costs order and a preparation time order to be made in favour of the same party in the same proceedings.

Question 15: Are there any changes that ought to be made to the provisions relating to wasted costs orders and/or preparation time awards?

Other proposed amendments

55. A number of other, miscellaneous revisions are included in the attached draft, with a view to clarifying and simplifying procedures and enabling the Tribunals to progress cases in a more efficient manner.

56. Among these other revisions are:

- changes to the rules on reasons for decisions, so that in future reasons that have been given orally at the end of the hearing will be given in writing only on request by one or other of the parties, and will all be in a similar form (ending the current distinction between summary reasons and extended reasons);

- provision for electronic communication to be used for service of documents;
- provision for hearings to be conducted by telephone in appropriate cases; and
- provision for temporary, as well as full, restricted reporting orders to be made (see draft Rule 52).

57. The Government would welcome comments on any of these other aspects of the revisions to the Rules.

Chapter 3 – The Public Register

58. The draft revised Rules essentially replicate (in square brackets) the current provisions relating to the Public Register of applications. The Government would, however, welcome views as to whether these provisions should be retained, either in their existing form or in a modified form, or whether the Register should, instead, be abolished.

Background

59. The Register is a public record of claims presented to the Employment Tribunals and judgments made by them. It has been in place for many years, but amendments to the Tribunal Regulations and Rules of Procedure in August 2000 spelt out in greater detail what it should contain. The changes had the effect of bringing the practice in England and Wales into line with that prevailing in Scotland.

60. The new provisions introduced in 2000 specifically required the Register to record the following details of a Tribunal claim:

- The case number.
- The date of receipt of claim by the Tribunal.
- The name and address of the claimant.
- The name and address of the respondent.
- The Regional Office of the Employment Tribunals dealing with the claim.
- The type of claim brought – in general terms, without reference to its particulars.

61. Since the introduction of these detailed requirements, a variety of differing views have been voiced with regard to the Register, particularly concerning the recording of information relating to claims. The recording of information on judgments has proved less contentious.

62. Prior to the passing of the Employment Act 2002, the Government, had proposed, in its consultation document *Routes to Resolution*, that Employment Tribunal claims should in future not be entered on the Register unless and until conciliation had failed and the claim was listed for a hearing. Responses to that consultation document showed some support for this proposal. There were also calls for the Government to abolish the Register altogether, and some to retain it unchanged.

63. The *Routes to Resolution* consultation also sought views as to whether or not there was a public interest in amending the provisions to require the publication of the particulars of cases on the Register, as opposed to simply the type of claim brought. A large majority of respondents opposed the making of any such change. However, some saw a public interest in disclosure of cases under the Public Interest Disclosure Act 1998. The

Government decided at that time not to proceed with the proposal to require the publication of particulars on the Register.

64. Since the *Routes to Resolution* consultation, the Government has continued to receive conflicting representations on issues relating to the Register.

The current consultation

65. The Government would welcome views to assist it in judging where the balance of public interest lies with regard to the future of the Register. Ministers will take decisions on these issues in the light of responses received.

66. On the one hand, entering case details on the Register allows information about the enforcement of employment rights to be publicly available. The Employment Tribunal system is a public service and its use should in principle be capable of being monitored; as should the level of disputes over specific rights, which is of interest to a number of special interest groups. (Human rights legislation does not, however, require applications to be publicly registered.) The information on the Register allows those who have particular services to offer, such as employment law advice and representation at a Tribunal, to make unsolicited approaches to applicants and respondents. The Government knows of no research that would indicate how often such services are actually taken up in these circumstances, and would be grateful for any information that could be provided in this regard.

67. On the other hand, each individual claim is a private matter. Individuals have rights to privacy. The Government has received numerous complaints from parties who have found it very intrusive and highly unwelcome to be contacted by third parties offering advice or other services. There have been allegations of blacklisting and bullying. Again, the Government would welcome any evidence that could be provided of this. There have also been suggestions that parties are less willing to settle a dispute between themselves once it is public knowledge, and that the publication of details on the Register therefore has an adverse effect on the prospects for settlements being reached, including through Acas conciliation. Any information that could be provided in this regard would also be much appreciated. The Government places a high priority on promoting the settlement of disputes in the workplace, without recourse to litigation.

68. In the civil courts, and in other types of tribunals, it is not generally the practice or requirement that details of the parties to a case are entered on a public register or otherwise made publicly available in advance of the case being determined. The Employment Tribunal system is thus unusual in this regard. Almost all courts and tribunals, however, make details of judgments publicly available once cases are concluded.

69. The Register is currently a hard-copy document, accessible for inspection in Bury St Edmonds (claims in England & Wales) and Glasgow

(applications in Scotland). It is not currently published on the internet, in part because of concerns that the information could be misused, e.g. to blacklist job applicants who have previously brought claims. The arguments in the above paragraphs apply equally to publishing the Register in a more easily-accessible format.

70. There are a number of options with regard to the Register:

- a) It could be maintained in its current form.
- b) It could be made more accessible by being published on the internet.
- c) The type or amount of information required to be recorded could be changed (e.g. the names and addresses of applicants could be removed from the Register in some or all cases, depending on their sensitivity).
- d) The timing of the placement of information on the Register could be changed (e.g. addresses and other personal details of the parties could be placed on the Register only after a judgment has been promulgated, rather than before the case has been heard).
- e) The Register could be abolished completely.

71. The Employment Tribunals System Taskforce, in its 2002 report, recommended complete abolition of the Register.

Question 16: Should the Public Register of Tribunal applications continue unchanged? If not, which of the options discussed should be pursued? Are there any other options that ought to be considered?

Chapter 4 - How to comment

72. This chapter explains how to obtain a copy of the consultation document, and how interested parties can submit their comments.

73. This consultation paper sets out a number of specific questions relating to the draft legislation attached. Responses to these questions, and comments on any other aspects of the draft legislation, are invited.

74. Copies of this consultation document and of the draft legislation are available from the DTI's website www.dti.gov.uk/er/hot_topics.htm. A Welsh version of this document will be made available on request. Braille, large print and taped versions of the document will be made available on request. It is also intended to make available a Welsh summary of the issues raised in this consultation document.

75. Responses are required by **Friday 5 March 2004** and should be sent to:

Niel Sutton
Dispute Resolution Branch
Department of Trade and Industry
1 Victoria Street UG120
London
SW1H 0ET
Email: niel.sutton@dti.gsi.gov.uk
Tel: 020 7215 5985/ Fax: 020 7215 2824

76. When a response is sent from a representative group, it would be appreciated if a summary could be included of the people and organisations the group represents.

77. If there are specific policy questions to be explored, please contact:

Mike Talbot
Employment Tribunal team
Department of Trade and Industry
UG 120
1 Victoria Street
London
SW1H 0ET
Email: mike.talbot@dti.gsi.gov.uk
Tel: 020 7215 6112/ Fax: 020 7215 2824

Annex A – Draft Regulations and Rules

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

^(a) 1992 c.53.

(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)

“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;

^(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.

“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^(j);

“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;

⁽ⁱ⁾ 1976 c.74.

^(j) 1975 c. 65.

“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;

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

^(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.

(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 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;

⁽ⁿ⁾ 1982 c.10.

^(o) 1999 c.17.

"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);

^(p) 1990 c.41.

(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.

(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.

(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

^(q) 1998 c.39.

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 a 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

^(b) S.I. [].

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.

(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).

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

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

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

(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) 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.

^(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).

(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

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

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 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.

^(a) 1998 c.46.

^(b) 1998 c.38.

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.

Annex B – Partial Regulatory Impact Assessment (including Small Firms Impact Test)

Purpose and intended effect

1. The overriding intention of the reform of the Regulations, and their accompanying Rules, is to render the Employment Tribunal system more efficient and to streamline procedures. This in turn should deliver a better service and swifter justice for parties in Tribunal cases whilst lessening the

burden on the Employment Tribunals Service (ETS). Meanwhile, new dispute resolution measures – currently being introduced in separate regulations – are intended to create a framework to encourage resolution of workplace disputes without recourse to litigation. Significant attention has been paid to ensuring that the two sets of regulations (dispute resolution and Employment Tribunal) dovetail appropriately with each other. For example, the dispute resolution regulations will address the need in certain circumstances (where extra time would be helpful for workplace procedures to run their course) for an extension of the time limit for presenting a Tribunal claim. It is intended that the two sets of regulations will come into force at the same time – on 1 October 2004.

2. The proposed changes to the current Employment Tribunal Regulations and Rules will implement the Tribunal reform provisions of the Employment Act 2002.³ They also seek to address some of the recommendations of the Employment Tribunal Systems Taskforce which reported in July 2002.⁴ In addition, the opportunity is being taken to make a number of other amendments, many of them incorporated at the suggestion of the Employment Tribunal Presidents. These include a significant re-structuring of the Rules, intended to ensure that they more closely follow the stages in the Tribunal process itself. In addition, the opportunity has been taken to recast the Rules in plain English.

Risk assessment

3. There are currently perceived to be a number of inefficiencies relating to the procedures of the Employment Tribunals, which, if addressed, should provide a better service and speedier justice for the parties and, where possible, better prospects for the settlement of cases before the hearing stage is reached.
4. The new provisions are intended to streamline current Tribunal procedures. The intended changes in some instances remove potential risks of legal uncertainty or of unnecessary delay or cost that can arise from current Tribunal/conciliation procedures.

Options

5. The Government has considered and adopted a number of different ways of improving the efficiency of the Employment Tribunal System, so as to reduce the costs to users and the taxpayer. These range from
 - a. doing nothing;
 - b. non-regulatory approaches (such as the development of better IT and more training for ETS staff);
 - c. regulatory approaches (such as the introduction, in the new Rules, of a pre-acceptance procedure for 'sifting out' flawed claims or responses at an early stage); and

³ For information on the Employment Act 2002 see <http://www.dti.gov.uk/er/employ/index.htm#Dispute>

⁴ For information on the findings of the Employment Tribunal Systems Taskforce and the Government response see <http://www.dti.gov.uk/er/individual/taskforce.htm>

- d. a regulatory approach that will enable more consistent use of best practice and more transparent processes (such as allowing the Presidents to issue practice directions).
6. Where a regulatory approach has been judged necessary, the draft revised legislation has been designed to be consistent with the Employment Tribunal System Taskforce's vision for the service. That is, to be even-handed and responsive to the needs of its users; accessible and understandable; as fast as reasonably practical; reliable, consistent and dependable; and properly resourced and organised in an accountable fashion.
7. This Regulatory Impact Assessment considers the costs and benefits of the regulatory approaches.

Business sectors affected

8. Employees and employers in all sectors are liable to become involved in Employment Tribunal cases, and hence to be affected by these proposals to reform the system.
9. Table 1 shows that, given the numbers employed in these industries, enterprises in the public administration, education, health etc, social and personal services have a disproportionate number of Tribunal claims made against them. These sectors therefore stand to benefit more than other sectors. The converse is true for enterprises in the wholesale/retail and hotels/restaurants industries.
10. The number of claims made to the Employment Tribunals varies by jurisdiction. Table 2 shows the proportion of claims per jurisdiction and by industry.

1. Propensity to be subject to an Employment Tribunal claim

	Proportion of claims (%)	Proportion of employment* (%)
Agriculture, fishing, mining, utilities	6	3
Manufacturing	21	22
Construction	5	5
Wholesale/retail, hotels/restaurants	21	30
Transport, storage, communications	8	7
Financial, renting, business	17	19
Public admin, education, health etc	23	15
Total	100	100

Source: Survey of Employment Tribunal Applications 1998 and SME statistics for 1998, Office of National Statistics (www.statistics.gov.uk) * for firms with employees

2. Percentage of claims made by jurisdiction and industrial sector

Industrial Sector	Unfair Dismissal	Breach of Contract	“Wages Act”	Discrimination	Redundancy Payments
Agriculture, fishing, mining, Utilities	54	8	19	6	14
Manufacturing	69	8	12	4	7
Construction	48	9	22	2	19
Retail, hotels, Restaurants	63	7	19	6	5
Transport, Storage, Communication	68	7	18	3	4
Financial, renting, Business	56	8	19	7	9
Public Admin, health, education	63	9	11	10	7

Source: SETA 1998

11. The table shows that there are sectoral differences in cases by main jurisdiction. For instance, the majority of cases came under the unfair dismissal heading. Of this group, a higher proportion occurred in the manufacturing sector and the least in construction. However, the opposite is true of claims for unpaid wages.
12. Those industries (construction; agriculture, fishing, utilities and mining) that have proportionally more cases under the redundancy payments, unpaid wages and breach of contract jurisdictions will be affected more from the introduction of the shorter, 7 week period for Acas conciliation. Those with more cases under unfair dismissal (manufacturing and transport and communications) will be more affected by the standard, 13 week period.

Assumptions

13. To estimate the costs and benefits of the legislation we have to make assumptions about the numbers of Tribunal cases in the future, taking into account the impact of legislation that will be introduced over the next few years.
14. We estimate that, given 100% compliance, the dispute resolution at work regulations will, in the longer term, reduce the number of tribunal claims by about 35-40,000. In the shorter term we assume 80% compliance, which would mean a reduction of 28,000 to 32,000 in the first year (2005/06) rising gradually to the full reduction in the fifth year of implementation in

year 5 (2010/11).⁵ Increases in the order of 6,000 in 2005/06 rising to 14,000 in 2007/08 would come from the introduction of other new jurisdictions.⁶

15. So, assuming that the current underlying trend in applications is flat at 100,000 per year⁷ then in 2005/06 the number of tribunal cases is likely to be between 74-78,000 rising to between 74-79,000 in 2010/11, with the effect of the increase in compliance on the dispute resolution regulations offsetting the effect of the introduction of more jurisdictions. Rounding to the nearest 5,000 we will use an assumption of between 75-80,000 cases per year from 2005/06, when the regulations are likely to start impacting.

Costs and benefits

16. The Employment Act 2002 paved the way for reforms to the Employment Tribunals and to the procedure for making a claim. The new measures seek to encourage parties (via the fixed period for conciliation) to resolve workplace disputes before the need for a full and costly Tribunal Hearing.
17. The measures assessed in this consultation aim to streamline the existing process to make it run more efficiently both for the ETS in terms of cost savings, and for claimants and employers in terms of increased clarity of procedures and methods and speed of access to justice.

Implementation costs

18. When new legislation is introduced, in order to comply, people usually have to become familiar with it. This bears a cost. For these regulations the main burden of compliance will fall to the ETS and to Acas.
19. The ETS estimate that the new regulations will need a new case handling system at a cost of about £320,000, and extra staff to implement change at a cost of about £120,000. In addition they will need to train 500 members of staff for 3 days to become familiar with the new system. This is estimated to cost at least £144,000.⁸ They will also need to run workshops for Chairmen at a total cost of about £25,000.⁹ This would take the total implementation costs for the ETS to about £609,000.
20. There will also be familiarisation costs for Acas. Conciliators and managers will need to attend meetings to help them understand the new regulations and to discuss behavioural changes that need to be

⁵ The Regulatory Impact Assessment can be found in the consultation document "Dispute resolution: consultation on draft regulations" http://www.dti.gov.uk/er/individual/dis_res_consdoc.htm

⁶ This includes changes and extensions to the law on discrimination and the new right to ask for flexible working introduced in April 2003.

⁷ In 2002/03 there were 98,617 applications registered by Employment Tribunals (Source: Employment Tribunal Service 2002-03 Annual Report and Accounts)

⁸ The cost of administrative staff for the year 2002/03 was £15.076 million. There were 713 full-time equivalent staff. The daily cost of each member of staff is therefore about $\frac{£15,076,000}{713/220} = £96$. The cost of training 500 staff for three days would then be about $£96 \times 3 \times 500 = £144,000$.

⁹ If each chairperson would need to discuss changes in a workshop lasting three hours, this would cost $£70$ (hourly cost of a Chairman) $\times 3 \times 118$ (number of Chairmen in 2002/03) = £24,780.

introduced. This is estimated to cost about £104,000.¹⁰ Helpline staff and senior advisers will also need to be trained at an estimated cost of about £10,000.¹¹ The total implementation costs to Acas will therefore be about £114,000.

21. This makes a total one-off implementation cost to the Exchequer of about **£723,000**.
22. Business will need to be aware of the processes of the Employment Tribunal system once a claim is made against them. Their role will be laid out clearly once they are asked to respond to a claim. This is the case at the moment and we envisage that reading the instructions will take no longer than it does at present. We therefore envisage no additional compliance costs to business.

Policy costs

Practice directions

23. The revised Regulations will give the Employment Tribunal Presidents the power to issue practice directions – directions on matters concerning Tribunal practice and procedural requirements.
24. This proposal aims to reduce any inconsistencies in Employment Tribunal practices and procedures between regions, and in the interpretation of their powers. The cost to the ETS of issuing each practice direction is assumed to consist of two days of legal and administrative time, coupled with consultation with senior members of the judiciary. This cost is estimated to be around **£53,000 per practice direction**.¹² In addition we assume that there will be a familiarisation cost to ETS and Acas staff of about **£24,000** for each practice direction.¹³

¹⁰ For conciliators the aggregate cost will be £280 (the daily cost of a conciliator) x 330 (the number of conciliators) = £92,400. For managers the aggregate cost will be £380 (the cost of a manager) x 30 (the number of managers) = £11,400. The total cost is therefore £103,800.

¹¹ For helpline staff the aggregate cost will be £180 (the daily cost of helpline staff) x 100 (number of staff) x 0.25 days = £4,500. For advisers the aggregate cost will be £380 (the cost of advisers) x 60 (the number of advisers) x 0.25 days = £5,700. The total cost will be £10,200.

¹² The decision stage is estimated to consist of one meeting in each office with on average 8 Tribunal Chairmen. Including meeting preparation, this will take half a day of Chairmen's time and one day of an administrator's time. The cost of the 118 full-time Chairmen was £12,943,000 for 2002/03 or £109,686 each. This makes a cost of about £70 per hour. The cost per meeting will therefore be £70 x 3.5 (the cost of half a day of a Tribunal Chairman) x 8 + £96 (estimate of the daily cost of administrative staff) = £1,960 + £96 = £2,056. If one meeting takes place in each office (there are 25 offices) then the total decision cost will be £51,400. We add to this the cost of drawing up the practice direction, which is assumed to consist of two days time for one Chairman, at a total cost of £1,000 and two days time of administrative staff at a cost of £192. The total cost per practice direction is therefore £51,400 + £1,000 + £192 = £52,592.

¹³ We assume that each practice direction takes staff and Tribunal Chairmen in the ETS one hour to become familiar with and Acas staff half an hour. This will cost the ETS (£15.076 million (administrative staff costs) + £12.943 million (cost of full-time Chairmen))/220/ 7 = £18,194 and Acas (£27.27 million x 0.64 (approximate proportion of Acas resources devoted to working with individual accounts)/ 220 /14) = £5,666. Total costs for the Exchequer will be £23,860.

25. The net benefits to be derived from this proposal are an increase in the efficiency and transparency of Tribunal procedure, together with increased certainty, more consistent outcomes and a reduced risk of challenge on the grounds of inconsistency. We would expect the benefits to more than offset the costs.

New forms

26. At present applicants and respondents can complete a form (currently called IT1 and IT3 forms) when they are submitting or defending a claim. This is not compulsory, they can write a letter. The new regulations will make completing a form compulsory. The forms will also be changed, requiring more information up-front from both claimant and respondent. The obligation to give the required information will impact on all claims after the new regulations come into effect, and use of the forms themselves will become obligatory from 6 April 2005.

27. When forms (or letters) are received by the Employment Tribunal Office, many contain insufficient information to enable them to be properly dealt with. This leads to lengthier Tribunal proceedings than might otherwise be necessary, with costs to the parties and to the ETS. In some instances the form needs to be returned to the claimant or respondent (as the case may be) for additional information before it can even be accepted. The introduction of prescribed forms, containing some mandatory questions, aims to address this information deficiency and better inform the Tribunal ahead of a hearing. The new forms may also help parties to determine the strength of each side's case and lead to more settlements prior to a hearing. In addition, it may lead to a slight reduction in Tribunal claims as it would help claimants to assess whether their case has a reasonable prospect of success.

28. The net cost to claimants and respondents is estimated to be zero at the most, with possibly a saving, because the information required would have to be given anyway, and it is more efficient to do so in one go at the outset.

29. The ETS will have to make sure that more forms are printed as it will be compulsory to fill these in. They will also be longer. Estimates for higher printing costs are in the order of £30,000 per annum. We have not made an estimate of the cost savings to the ETS as we have not been able to quantify the extent of the reduction in Employment Tribunal cases (if any).

Pre-acceptance procedures

30. Under this proposal, ET Chairmen will be obliged to 'knock back' at the application stage any claim that fails to meet certain conditions set out in the revised Rules.¹⁴ When a claim is sent by a claimant to the ETS, one of two outcomes will be possible:

- i. The claim is assessed by ETS staff, is accepted, and proceeds to the next stage.

¹⁴ For details of the pre-acceptance procedure, see Chapter 2

- ii. ETS staff believe there is doubt over whether the claim can be accepted into the system and place it before a Tribunal Chairman, who decides whether or not it meets the specified conditions and should be accepted as a case.
31. In the first scenario, the cost to the ETS arises from having to review the claim to determine whether or not it is properly presented and satisfies the conditions for acceptance. Currently, all claims are assessed, although the current assessment process is not as robust as the one in the draft revised Regulations and claims cannot be refused acceptance if they do not meet the criteria. It is envisaged that the new forms will make it clear whether or not the criteria have been met and if they have not been met the claim will not be accepted. We envisage that additional cost to staff will be modest, say in the order of an extra 10 minutes of staff time per case. This will cost about £2 per case or about **£0.2 million per year**.¹⁵
32. The second scenario involves the use of a Tribunal Chairman. Assuming that the Chairman takes 15 minutes to consider the claim and make a decision, this would cost £17.50.¹⁶ Currently the number of cases that do not comply with the present criteria runs to about 2,000 per annum. With the extension of the list of criteria and in particular with the introduction of new statutory grievance procedures this number is likely to increase. If we assume that initially as the new dispute resolution regulations bed down 10%¹⁷ of cases (8,200-8,800) have to be reviewed by a Tribunal Chairman this will cost up to about **£0.2 million** in aggregate in 2005/06. If this rate falls to 5% (about 4,000 cases) then the costs will fall to less than **£0.1 million** per year by 2010/11.
33. If the Chairman's decision is the subject of an application for review¹⁸, this could cost the ETS about two hours of a Chairman's time to review the case and about one hour of an administrator's time or about £154 per case or in aggregate about **£30,000 per annum falling to about £15,000 per annum**. We assume that up to five cases a year are then taken to the Employment Appeal Tribunal.
34. The total cost to the new procedure to the ETS would therefore be about **£0.3 million per year**.
35. The benefits of the measure are that a significant number of claims that would ultimately be unsuccessful in any event will be 'weeded out' at this initial stage, thus reducing the burden on the ETS, the claimant and the respondent (the latter of whom need not even be troubled by service of the

¹⁵ The hourly wage of an hour of ETS administrative staff is estimated to be £14. Therefore the cost of 10 minutes time is £14/6 = £2.33. The aggregate cost is therefore 75,000 to 80,000 x £2.33 = £174,750 to £186,400.

¹⁶ The cost of the 118 full-time Chairmen was £12,943,000 for 2002/03 or £109,686 each. This makes a cost of about £70 per hour. The cost of a Chairman looking at the application and making a decision on whether it should proceed will equate to a quarter an hour of a Chairman's time. This will cost £17.50.

¹⁷ If we assume that the number of cases that needs to be reviewed by Chairmen doubles and add to this the number of claims that are made without going through the statutory grievance procedures this comes to about 8,200-8,800, or about 10% of the expected claims.

¹⁸ We assume that this takes place in 2% of cases that are seen by Chairmen or about 170 cases per year initially falling to about 100 cases.

case papers). Many would be re-submitted and will get through the pre-acceptance procedures. If we assume that about 25-50% do not get re-submitted¹⁹, this would initially represent 2,050 to 4,400 fewer cases going through the system, falling to 1,000 to 2,000 after five years. This will mean cost savings to employers and to the Exchequer. Employees will, as a result of not bringing a claim that has no chance of success, benefit from reductions in stress, as well as less time spent on the case. We do not attempt to quantify the opportunity cost to employees.

36. Costs to business of each case are estimated to be about £2,000. Therefore aggregate cost savings to business would be about **£4.1-8.8 million falling to £2.0-4.0 million per annum in 2010/11.**
37. It will also save costs to the ETS and Acas. The marginal cost of a tribunal application to the Exchequer is about £580²⁰, giving an aggregate saving of **£1.2-2.6 million in 2005/06 falling to £0.6-1.2 million by 2010/11.**
38. There will also be a new pre-acceptance procedure for *responses* to claims, but this will entail the ETS (and, if necessary, a Chairman) establishing only that the response is entered on the correct form, that the time limit has been complied with and that it contains all the required information specified in the Rules. This measure is not expected to have more than a modest impact, and the benefits cannot be readily quantified.

Introduction of fixed periods for Acas conciliation

39. Acas' role is to offer help in resolving disputes before they reach the Tribunal hearing stage. This can lead to an Acas-brokered settlement being reached at the very last moment before the case comes to a hearing. This prolonged process can cost time and money to all concerned, including the Employment Tribunals.
40. To encourage early resolving of disputes, new rules have been drafted to introduce a fixed period for conciliation which will apply in most cases, with the aim of reducing the number of cases in which there is a need for a Tribunal hearing. The aim would also be to save on administration costs to the ETS.
41. There are three categories for fixed period conciliations:
- Cases where no fixed period applies. Therefore Acas will have an ongoing duty to conciliate for an unlimited period of time. This category will include claims brought under the Sex Discrimination Act, the Equal Pay Act, the Race Relations Act and the Disability Discrimination Act.
 - A thirteen week fixed period (the standard conciliation period) that covers all claims that do not fall within the other two categories.

¹⁹ This could be because once the applicant has filled in a form they realise they do not have a case, or maybe because once they have started a formal grievance procedure they reach an agreement with their employer.

²⁰ Source: The ETS 2002/03 Annual Report and Accounts and Acas.

- A seven week fixed period (the short conciliation period). This covers five jurisdictions identified as 'fast track' jurisdictions. These are: unauthorised deduction of wages, breach of contract, redundancy payment²¹, unpaid guarantee pay and unpaid medical suspension pay.
42. After the period for conciliation has ended (or sooner if the outcome is apparent), Acas will inform the ETS either that the case has settled, or that the case has not settled, allowing for it to proceed if necessary, to a hearing. Where, at the end of the standard fixed period (in cases brought under the relevant jurisdictions), a settlement is regarded as very likely, there will be some limited discretion for the period to be extended, by two weeks only.
 43. Over the period 2002/03, ETS data shows that Acas-conciliated settlements accounted for 38% of applications.²² Around a third of all applications are withdrawn (this could be because of a private settlement or because the case is abandoned). Around 24% of cases go to a hearing.
 44. All claims that are not struck out shortly after submission will be affected by these measures (although where cases brought under the discrimination jurisdictions are concerned, the legal position in this regard will be effectively unchanged).
 45. The fixed period proposal will put pressure on both parties to resolve the dispute through Acas more quickly. The intention is that this will increase the number of Acas settlements and decrease the number of hearings, as well as saving time.
 46. We assume that the number of Acas settlements increases by 2-5% and that this results in a reduction in Tribunal hearings.
 47. We also assume that even where there is no increase in the number of Acas settlements, there will be a reduction on the average time to reach settlement, which will save on ETS administration costs. Costs tend to rise as each case reaches closer to its hearing date. We assume a saving in ETS administrative costs of between 2-4%.

Cases where no fixed period applies

48. ETS data shows that around 17,000 cases came under this category in 2002/03. We expect that the number of cases will rise to about 25,000 in 2010/11. For these cases, because they can continue as normal, there is no direct cost saving/imposition arising from these proposals. Indirectly, there may be some modest benefits in reducing the waiting time for a hearing due to a reduction in the number of hearings that follow from cases that fall within the other two fixed period categories.

²¹ Where the claim is made against an employer, not the Secretary of State.

²² Acas reports a higher settlement rate. One of the reasons for this is that Acas does not conciliate in all jurisdictions handled by the ETS.

Thirteen week fixed period for conciliation

49. ETS data show that about 48,000 cases would come under this category in 2002/03. We estimate that this will fall to about 31 -33,000 in 2010/11.
50. In cases which would attract a 13 week fixed period for conciliation, ETS data shows that in 2002/03 around 43% settled as a result of Acas conciliation. Applying this proportion to future cases and assuming 2 -5% more cases settle this will result in about 300-700 more cases settling before a hearing and 300-700 fewer cases going to a hearing. This represents 4-9% fewer hearings.
51. Fewer Tribunal hearings will mean savings to business on management time and legal fees. A case that is settled in advance of a hearing absorbs 19 hours less management time and about half the legal fees than a case that goes to a hearing.²³ The cost saving is therefore about £1,000 per case.²⁴ The cost saving to employers for reduced hearings is estimated to be about **£0.3-0.7million**.
52. The average marginal cost to ETS of a hearing is estimated to be at least around £1,300.²⁵ A reduction in the number of hearings of around 300-700 therefore implies a cost saving of about **£0.4-0.9 million**.
53. The average administrative staff cost to the ETS of each case is about £160.²⁶ A two to four percent saving in administration costs from quicker settlements would be equivalent to a saving of £3 to £6 per case. The aggregate saving on administration costs for the 13 week jurisdictions would therefore be about **£0.1-0.2 million**.²⁷
54. The aggregate saving to the ETS would therefore be between **£0.5-1.1 million per year**.
55. Employees would benefit from reductions in the time spent in dealing with the case.

Seven week fixed period for conciliation

56. ETS data shows that over 2002/03, there were around 35,000 applications made that would fall within this category. We estimate that by 2010/11 this will fall to between 20,000 and 22,000 cases.
57. In cases which would attract a 7 week fixed period for conciliation, ETS data shows that in 2002/03 around 34% settled as a result of Acas conciliation. Applying this proportion to future cases and assuming that 2-5% more cases settle this will result in about 150-350 more cases settling

²³ See Department of Trade and Industry (2002) 'Findings from the 1998 Survey of Employment Tribunal Applications' Employment Relations Research Series No. 13, tables 8.5 and 8.6

²⁴ Savings on management time are 19 x £25 (cost of one hour of management time) = £475. Savings on legal costs are £1188 - £590 = £598.

²⁵ In the year 2002/03 full-time Chairmen cost the ETS £12.943 million and other fees (such as for part-time Chairmen) cost £15.256 million. This is a total cost of £28.199 million or given 22,263 hearings and average cost per hearing of £1,267. This does not include administrative staff time and cost of premises.

²⁶ The total cost of administrative staff in 2002/03 was £15.076 million. The total number of cases dealt with was 95,554. This comes to a cost of £158 per case.

²⁷ 31,000 to 33,000 x £3 to £6 = £93,000 to £198,000

before a hearing and therefore 150-350 fewer cases going to a hearing. This represents 2-6% fewer Tribunal hearing cases.

58. Fewer Tribunal hearings will mean savings to business on management time and legal fees. The cost saving for an average hearing is about £1,000 per case. However cases in this category typically absorb fewer hours of management time (25-50% less) and lower legal fees (50-75% less). We therefore assume that the average cost saving for these types of hearing is £500. The aggregate cost saving to employers for reduced hearings is estimated to be about **£0.1-0.2million per year.**²⁸
59. The aggregate cost saving to the Exchequer from 150-350 fewer cases going to a hearing will be **£0.2-0.5 million per year.**²⁹
60. The savings to the ETS on administrative staff costs from quicker settlements would be about **£0.1 million per year.**³⁰ This would bring the total saving to the ETS to **£0.3-0.6 million per year.**
61. Employees would benefit in a reduction in time spent in dealing with the case.

Summary

62. Table 3 summarises the benefits of the introduction of fixed periods for conciliation.

3. Summary of benefits of the introduction of a fixed period for conciliation

	Benefits annual
Employers	
13 week period	£0.3-0.7 m
7 week period	£0.1-0.2 m
Total	£0.4-0.9 m
Exchequer	
13 week period	£0.5-1.1 m
7 week period	£0.3-0.6 m
Total	£0.7-1.7 m

Note: figures may not add up due to rounding.

Introduction of default judgments without a hearing

63. The intention here is to provide for the Employment Tribunals to make default judgments in cases that are uncontested – i.e. cases where an employer has not entered a response within the time limit for doing so – without a hearing. This should, in such cases, mean a cost saving for the ETS (who will not have to list for a full hearing), and time savings for claimants who will not have to prepare for and attend the hearing.

²⁸ Calculated as £500 x 150 to 350 = £75,000 to £175,000.

²⁹ Calculated as £1,300 x 150 to 350 = £195,000 to £455,000.

³⁰ Calculated as 20,000 to 22,000 x £3 to £6 = £60,000 to £132,000.

64. We assume that between 5 and 10% of cases that reach the hearing stage are likely to be uncontested.³¹ This means that on the basis of our expectations for future cases by the year 2010/11, about 750-1,500 would be uncontested, although it is likely that there will be more default judgement hearings initially as respondents get used to the tighter application of the time limits.
65. The cost of preparing a written determination is estimated to be £336.³² We assume that the cost of taking such a case to a hearing would be double this, therefore the net saving to the ETS per case would be about £336 or in aggregate **£0.3-0.5 million per year**.

Written reasons

66. There will be changes to the Rules on reasons for decisions, so that in future reasons that have been given orally at the end of the hearing will be given in writing only on request by one or other of the parties, and will all be in a similar form (ending the current distinction between summary reasons and extended reasons). We assume that in 60 to 70% of cases, reasons are provided at the end a hearing and that in future in 75% of these cases written reasons will be requested.
67. We estimate that the number of cases going to a hearing in the future will be about 15,000 to 16,000. The number of cases where written reasons are given at the end of a hearing will be about 9,000 to 11,200. A quarter will no longer require a written reason. This amounts to 2,250 to 2,800. The cost per written reason is estimated to be about £100.³³ The aggregate cost saving is therefore between **£0.2-0.3 million per annum**.
68. There will also be costs savings from no longer having to provide extended reasons - all written reasons will be of the same format. We have not attempted to cost this saving.

Awarding costs against representatives

69. Two changes are to be made to the present costs rules: (i) a new provision for awards in respect of preparation time will be introduced in some circumstances; (ii) it will be possible for representatives to incur a 'wasted costs' order on account of their unreasonable conduct (this will apply only to *paid* representatives and not to those in the 'not for profit' sector). The effect will be to encourage more reasonable behaviour of parties and, in a very few instances, representatives, and to ensure that those who behave unreasonably bear the cost.

Unintended consequences

70. The main concern in the above costs and benefits is that parties subject to a fixed period for conciliation adapt their behaviour in such a way that there is no difference in the proportion of Acas settlements after the new regulations come into place. This would mean no reductions in hearings,

³¹ DTI estimate. Note, this is an upper bound estimate.

³² This consists of two hours of two administrative staff's time (£56) and two hours of two Chairmen's time (£280).

³³ One hour of a Tribunal Chairman (£70) and two hours of administrative staff (£28).

although there would still be benefits in terms of faster settlements and a shorter lead-time to hearings. Another possibility would be that, rather than encouraging Acas settlement, constraining the time for conciliation may mean fewer settlements and more hearings.³⁴ This could mean increased rather than decreased costs to both employers and the Exchequer. Given these risks, monitoring will be particularly important.

Monitoring and review

71. This will be done through continuous consultation with officials in the ETS and Acas and the monitoring of administrative databases to see what effect the changes to the regulations are having, looking at the balance between applications, Acas conciliations, hearings (together with results), and withdrawals. There will be a more formal review of the impact of the fixed period aspect of the regulations about 18 months after they have been implemented to see how this is working. In the longer term there will be a survey of Tribunal applications which will look at how the system is working (as well as costs to employers) compared with the present. A baseline survey is currently in the field.

Impact on small business

72. Small firms will also benefit from the proposals analysed in this impact assessment. Taking into account the size of the workplace, small firms are more likely to be taken to an Employment Tribunal than larger firms.³⁵ They will therefore benefit disproportionately.

73. The Department had informal discussions with small firms and representatives from small firms, which showed that they were broadly content with the main thrust of the Government's approach, although they did make suggestions on the detail. Responses from small/medium enterprises to the *Routes to Resolution* consultation revealed no concerns towards the proposals in this RIA.

Competition assessment

74. We have applied the Competition Filter and we believe that the competition impact is likely to be negligible. The costs of the proposals are negligible and unlikely to impose a significant and disproportionate burden on firms. In addition, the proposals seek to make the Tribunal system more efficient for all firms concerned and apply only when a firm is involved in an Employment Tribunal case. There are therefore no anticipated anti-competitive effects.

Equity and fairness

75. The 1998 Survey of Employment Tribunal applications (SETA 1998) shows that the majority of applications were from 'white' claimants (around 93% for all jurisdictions).³⁶ Economic data shows that around 6% of

³⁴ This is more likely to occur when the hearing date is not close to the conciliation window.

³⁵ See M. Cully, S. Woodland, A. O'Reilly and G. Dix "Britain at Work" Routledge, London 1999, table 11.6.

³⁶ SETA 1998, table 3.1

employees in the UK are of an ethnic minority origin.³⁷ This suggests therefore that ethnic minorities are not likely to benefit proportionately more from the proposals in this impact assessment. SETA 98 shows that, with the exception of discrimination cases, the majority of applications were from male claimants (around 60% across all jurisdictions). Around 49% of all employees in the UK labour market are female.³⁸ Even though there are relatively more applications from men than women, we do not expect there to be any significant difference in the impact of the proposals on male and female employees.

Enforcement and sanctions

76. If awards are made but not paid, these penalties can be enforced through the civil courts in England and Wales. In Scotland they can be enforced without recourse to the civil courts.

Consultation

77. The Department of Trade and Industry has consulted a number of other government organisations, including Acas, the ETS and other Whitehall Departments.

78. The Dispute Resolution Advisory Group with representatives from key stakeholders, including business, small business and unions, met in June 2003 to discuss the Employment Tribunal Regulations.

79. The measures set out in the consultation document have already been the subject of an initial 'pre-consultation' with the ET Presidents and judiciary and other key stakeholders. Views received at that stage have been fully considered and taken into account in finalising the draft revised Regulations and Rules.

80. At an earlier stage, the Department launched a formal consultation (Routes to Resolution) prior to the introduction of the primary legislation that these revised Regulations and Rules are (in part) designed to implement. That earlier consultation finished in October 2001.³⁹

Summary and recommendation

81. This partial Regulatory Impact Assessment finds that the proposals are likely to incur modest costs to the Exchequer. However there are likely to be relatively larger benefits to all parties involved, including employees.

82. The benefits stem primarily from increased efficiency in the way the ETS operates, the manner and speed in which claims are processed, and the increased consistency in the way Tribunal cases are conducted and written reasons provided.

83. Table 4 outlines the quantifiable costs and benefits for employers and the Exchequer that are expected in the longer term – by 2010/11. Some costs and benefits may be higher in the shorter term.

³⁷ Labour Force Survey, Office of National Statistics, March – May 2003

³⁸ Labour Market Trends, August 2003.

³⁹ The Government response is at <http://www.dti.gov.uk/er/individual/etresponse.htm>

4. Summary of longer term costs and benefits

	Annual benefits	Annual costs	One-off costs
Employers			
Pre-acceptance procedures	£2.0-4.0 m		
Fixed period of conciliation	£0.4-0.9 m		
Total	£2.4-4.9 m		
Exchequer			
Implementation costs		£30,000	£723,000
Pre-acceptance procedures	£0.6-1.2 m	£0.3 m	
Fixed period of conciliation	£0.7-1.7 m		
Default judgements	£0.3-0.5 m		
Written reasons	£0.2-0.3 m		
Total	£1.8-3.6 m	£0.3 m	£723,000
Note: figures may not add up due to rounding			

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Annex C – Consultation criteria and making a complaint or general comment on the consultation

Consultation criteria

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated. The complete code is available on the Cabinet Office's web site <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>

Comments or complaints

8. If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please contact Philip Martin, DTI Consultation Coordinator, Department of Trade and Industry, Room 725, 1 Victoria Street, London, SW1H0ET, Phone: 020 7215 6206, E-mail: Philip.Martin@dti.gsi.gov.uk.

Annex D – List of Pre-consultation Stakeholders

Acas
Bar Pro Bono Unit
British Chambers of Commerce
British Hospitality Association
British Retail Consortium

Business Group
Cabinet Office - Regulatory Impact Unit
Citizens' Advice Bureaux
Citizens' Advice Bureaux (Scotland)
Commission for Racial Equality
Confederation of British Industry
Construction Confederation
Council on Tribunals
Department of Constitutional Affairs
Department for Environment, Food & Rural Affairs
Department of Work and Pensions
Disability Rights Commission
Employment Appeals Tribunal
Employment Lawyers Association
Employment Lawyers Bar Association
Employment Tribunals Service
Employment Tribunal System Taskforce
Engineering Employers' Association
Equal Opportunities Commission
Federation of Small Businesses
Forum of Private Business
Free Representation Unit
GMB
Health and Safety Executive
Home Office
Law Centres Federation
The Law Society
The Law Society of Scotland
National Farmers Union
Presidents of the Employment Tribunals
Office of the Solicitor for the Advocate General for Scotland
Small Business Council
Small Business Service
Scottish Executive (Justice Department)
Trades Union Congress
Transport & General Workers Union
Treasury Solicitors
Union of Shop, Distributive and Allied Workers
Welsh Assembly
Women and Equality Unit, DTI