

**DISPUTE RESOLUTION**

Secondary legislation  
consultation

JULY 2008

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# Introduction

1.1 Over the last year, the Government has carried out a comprehensive review of the dispute resolution system. This process, starting with the independent review led by Michael Gibbons (“The Gibbons Review”<sup>1</sup>), has involved widespread consultation on a range of measures to improve and simplify all aspects of dispute resolution<sup>2</sup>. These measures provide the framework for a more efficient system for dispute resolution which is easier to use, offers users advice on more proportionate ways of resolving their disputes, and enables disputes to be resolved earlier, with less lost time, expense and stress for all parties.

1.2 The Gibbons Review concluded that better advice for employers and employees, and greater conciliation in the early stages of disputes could enable more parties to resolve their differences without needing to go to a tribunal. The Government is making substantial investments to improve the advice on resolving disputes available to employers and employees, and is providing resources for additional Acas conciliation services for disputes that are likely to become the subject of a tribunal claim.

1.3 The Employment Bill, which is currently being considered by Parliament, will take forward key legislative reforms. These include repealing the statutory dispute resolution procedures and related provisions about procedural unfairness in unfair dismissal cases. The Bill gives employment tribunals discretionary powers to adjust awards if parties have unreasonably failed to comply with a relevant statutory code; Acas is currently consulting on a revised statutory code on disciplinary and grievance procedures to reflect the new regime<sup>3</sup>. The Bill also contains provisions to enable Acas to target its conciliation resources on cases with most likelihood of early resolution, and removes the time limits on Acas conciliation after a claim has been brought.

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<sup>1</sup> “A review of employment dispute resolution in Great Britain”, published 21 March 2007

<sup>2</sup> Alongside the Gibbons Report, the Government published a consultation paper, “Resolving Disputes in the Workplace”. The Government response to this consultation was published on 19 May 2008, and can be found at <http://www.BERR.gov.uk>

<sup>3</sup> <http://www.acas.org.uk/index.aspx?articleid=2059>

1.4 The investment in Acas services and the legislative reforms in the Employment Bill are complemented by a number of measures set out in this consultation, which may require secondary legislation.

1.5 The Government is seeking views on:-

1. extending the definition of a “relevant advisor” who can sign off compromise agreements;
2. a change to the current statutory regime of interest accruing on unpaid employment tribunal awards;
3. broader powers for employment tribunals to make recommendations in discrimination cases;
4. tribunal procedure for determinations without the need for a tribunal hearing in a limited number of jurisdictions;
5. adding Holiday Pay to the list of jurisdictions normally heard by an Employment Judge sitting alone;
6. updating The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 as amended, with a number of technical and procedural amendments;
7. secondary legislation which is required as a result of the Employment Bill. This includes some minor consequential changes, and the transitional arrangements for the new regime; and
8. changes to The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 as amended, relating to wider Tribunals Service transformation.

1.6 A summary of the consultation questions is available at Annex A. Draft regulations are available at Annex B. Annex C contains an informal consolidated text of the main changes to the regulations, which is purely for information and to assist understanding of the proposals.

1.7 The forms used by employment tribunals for submitting claims and responses (known as ET1 and ET3 respectively) are also under review. Drafts of the new forms, which have been amended to reflect the change to the statutory procedures, are available at Annex D. We have taken the opportunity to make other changes to the forms, intended to simplify and shorten them, and the Government would welcome comments on these.

1.8 The consultation was published on 1 July 2008. The closing date for this consultation is 26 September 2008. To complete the response form online please go to: [www.tinyurl.com/5uctzu](http://www.tinyurl.com/5uctzu)

#### Additional copies

1.9 You may make copies of this document without seeking permission.

1.10 Other versions of the document in Braille, other languages or audio-cassette are available on request.

### Confidentiality & Data Protection

1.11 Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

1.12 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department

### Help with queries

1.13 Questions about the policy issues raised in the document should be sent to [DisputeResolutionSecondaryLegislation@berr.gsi.gov.uk](mailto:DisputeResolutionSecondaryLegislation@berr.gsi.gov.uk) or to Niel Sutton, Dispute Resolution Secondary Legislation Consultation, Bay 4100, BERR, 1 Victoria Street, London SW1E 0ET.

### Impact Assessment

1.14 An Impact Assessment of the Employment Bill was published in February 2008 and can be viewed at <http://www.berr.gov.uk/files/file44363.pdf>

### Complaints

1.15 If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Vanessa Singhateh,  
Consultation Co-ordinator  
Department of Business, Enterprise and Regulatory Reform  
Better Regulation Team

1 Victoria Street  
London  
SW1H 0ET

E-mail: [vanessa.singhateh@berr.gsi.gov.uk](mailto:vanessa.singhateh@berr.gsi.gov.uk)  
Tel: 020 7215 2293  
Fax: 020 7215 0235

1.16 A copy of the Code of Practice on Consultation is at Annex E.

## Section 2

# Extending the definition of “relevant advisor” for compromise agreements

2.1 The Government is considering expanding the categories of “relevant advisor” who can sign off compromise agreements.

2.2 A compromise agreement is a binding agreement between the parties to a dispute to settle it out of tribunal or court. It allows an employee to agree that claims under the jurisdictions covered are satisfied if the agreement meets certain conditions, including that the employee must have received advice from a relevant independent advisor<sup>4</sup>.

2.3 The groups currently authorised as “relevant independent advisors” are qualified lawyers, legal executives, certified trade union members, and certified advice centre workers. Relevant advisors must be competent to give advice, have insurance or professional indemnity cover, and must be independent (for example they must not be employed by the employer).

2.4 The Government has received a proposal from The Chartered Institute of Personnel and Development (CIPD) to include their qualified HR professionals within the definition of “relevant advisor”. We understand that many HR professionals already play a role in negotiating compromise agreements, but under existing legislation they are unable to complete the process

2.5 If this proposal was implemented, CIPD members acting as relevant independent advisors would, of course, be subject to the same requirements as set out above.

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<sup>4</sup> The conditions regulating compromise agreements are set out in S203 of the Employment Rights Act 1996

- i) Do you agree with adding CIPD members to the list of relevant independent advisors?
- ii) What do you think are the benefits, disadvantages and risks?
- iii) Do you think any other group(s) of advisors ought to be considered and if so, why? What other issues need to be considered in respect of the group(s) that you have suggested?



## Section 3

# Arrangements for accruing interest on unpaid employment tribunal awards

3.1 The Government is considering changing the current statutory regime of accrual of interest on unpaid employment tribunal awards. Interest accrued on unpaid employment tribunal awards should provide an adequate compensation for the loss of purchasing power of the claimant. It should not be punitive to the respondent, but rather restore what had been lost by the claimant in real terms. The Government is considering amending both the interest rate on unpaid awards, and the period after which interest accrues.

### Interest rates

3.2 Presently when interest accrues on an unpaid employment tribunal award, the interest rate is fixed at 8%. The Government is seeking views on whether this fixed rate should be replaced by a floating rate in future, to reflect the prevailing cost of borrowing. For example, one option would be to set the rate at the Bank of England base rate plus 1.5% or 2%.

iv) Do you agree with the case for moving from a fixed to a floating rate of interest on unpaid awards?

v) If so, what should the rate be and why?

### Accrual of interest on unpaid awards

3.3 In most employment tribunal jurisdictions, interest on unpaid employment tribunal awards is automatic and is accrued if the award remains unpaid 42 days after an employment tribunal decision. However, in discrimination and equal pay cases, interest on unpaid awards is automatically accrued from the day after the date of the employment tribunal's decision, unless the respondent settles the full amount awarded within 14 days, in which case no interest is payable

3.4 The Government is considering the option of extending the regime of interest on unpaid awards for discrimination and equal pay cases (which has been set by decisions of the European Court and cannot be changed) to all employment tribunal jurisdictions.

vi) Do you agree with the case for streamlining the date from which interest is paid? This would mean aligning with the existing provisions on discrimination and equal pay.

# Broader powers for employment tribunals to make recommendations in discrimination cases

4.1 At present, employment tribunals, having heard the evidence in a tribunal hearing, can recommend that the respondent take steps to reduce the impact on the claimant of the discrimination proved in the case, for example by making changes to policies and practices which have been found to be discriminatory. The Dispute Resolution Review consultation referred to proposals advanced during the Discrimination Law Review that employment tribunal powers to make recommendations should be extended. The suggestion was that tribunals should be able to make recommendations in discrimination cases even where this might not benefit the claimant in the case at issue, for example, because the claimant was no longer employed by the respondent. It was suggested that this might help employers eliminate discriminatory practices and benefit other employees who might potentially be affected by the acts of unlawful discrimination found to be proved in the case.

4.2 The Government believes that strong arguments for extending recommendation powers in this way were advanced in response to the Discrimination Law Review consultation and intends to make such an extension in the proposed Equality Bill. A similar extended power is already available in Northern Ireland - the Fair Employment Treatment Order 1998 provides that tribunals can make *“a recommendation that the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on a person other than the complainant of any unlawful discrimination to which the complaint relates”*.

4.3 Recommendations made under the extended power would be intended to benefit the wider workforce and would not have to benefit the individual claimant. However, recommendations would of course have to be based on the evidence presented by the parties in the case. An example

of a recommendation which might be made under the extended power is as follows:

- A claimant wins a case of race discrimination after he is repeatedly passed over for promotion. He has left the firm in question as a result of the discrimination he has suffered. The evidence in the case shows that the employer has no procedures in place to ensure promotion exercises are carried out in a fair and transparent manner. The tribunal recommends that the firm takes steps to make its promotion procedures fair and transparent, perhaps by way of training for managers and/or by introducing a written policy. These changes will minimise the risk of other employees being discriminated against when applying for promotion.

4.4 Non-compliance with a recommendation made under the extended power would not attract a financial penalty. However, if a future claimant were to bring a case against a respondent who had previously been the subject of a recommendation and the facts of the case were similar, the previous recommendation may be relevant to the tribunal's consideration of the case.

4.5 Recommendations would form part of the judgment, which will in due course be made available on the Employment Tribunal Service's website. Claimants and/or their representatives will therefore be able to search for previous recommendations. They could also ask the respondent about any previous recommendations through the questionnaire procedure.

4.6 Training and guidance will be provided to judges to assist them in exercising their new powers effectively.

4.7 The Government's response to the Discrimination Law Review consultation, gives full details of the arguments made for and against extended recommendation powers, and sets out its rationale for extending the existing power.

- vii) What guidance ought to be made available to parties on the operation of the extended power?
- viii) Should guidance to the judiciary emphasise that recommendations should be commensurate to the capacity of the employer to implement them?
- ix) Do you have views on how employees might be informed about recommendations made to their employer?
- x) Do you think that a mechanism should also be put in place for alerting tribunals to relevant previous recommendations?

## Section 5

# Written Determinations

5.1 The Government is seeking to establish, within the tribunal system, procedures for the determination, without the need for tribunal hearing, of straightforward cases in a limited number of jurisdictions. Such a process has the potential to benefit both parties by reducing unnecessary burden on the parties' time and saving them from disproportionate costs associated with attendance at or representation at tribunal hearings.

5.2 Subject to further design work and consultation, the Government expects that the main features of paper-based determinations would be:

- such determinations could only happen with the positive informed consent of all parties and where an Employment Judge considers it appropriate;
- informed consent in these circumstances means consent given by parties in possession of both the claim and response forms. The Government has given a commitment in Parliament during the passage of the Employment Bill that parties would have at least three weeks to consider whether to consent to a written procedure. This will enable them to seek advice should they wish;
- the eligible jurisdictions would be: unlawful deductions from wages, breach of contract, redundancy pay, holiday pay, and the national minimum wage;
- claims that combine these jurisdictions with others outside the list would not be eligible for determination without hearing;
- there would be no monetary limit on claims eligible for this approach, (save breach of contract cases which are limited to an award of £25,000). All claims in the relevant jurisdictions would be eligible in principle;
- Determinations made without a hearing should be appealable to the Employment Appeals Tribunal in the same way as cases decided following a hearing.

5.3 As a consequence of the abolition of fixed periods for Acas conciliation, the Tribunals Service will in future routinely be able to list cases in the eligible jurisdictions for hearing six or seven weeks after a

claim is lodged. This will inevitably be a quicker route to determination than the proposed determination without a hearing procedure.

5.4 The Government seeks views on the following procedure which should ensure that cases where the parties are not interested in a written determination are not delayed unnecessarily:

- Claimants are asked whether they would in principle be interested in a written determination, either in the claim form itself through a tick box, or in a separate letter sent to them with the acknowledgement of their claim. It is explained to them that this would involve a delay in the determination of their claim, but may enable them not to have to attend a hearing.
- Respondents are asked the same question in the response to claim form.
- Where all parties have said in principle they would be interested in a determination without a hearing, the hearing is postponed to enable an Employment Judge to look at the papers and decide whether it is appropriate in that particular case.
- Where the Employment Judge decides the case is suited to determination without a hearing, the positive informed consent of all parties is sought through a letter.
- Where all parties consent, a written determination is made. If consent is not given by any party, a hearing is scheduled.

- xi) Do you agree that there are benefits in introducing such a procedure?
- xii) Can you propose an alternative approach, which would still protect the rights of parties to tribunal cases and ensure that written determinations were only made on the basis of informed positive consent?

## Section 6

# Adding Holiday pay to the list of jurisdictions normally heard by an Employment Judge sitting alone

6.1 A full panel of three tribunal members does not sit in all employment tribunal cases. Since 1996, in a number of jurisdictions a Chairman (now known as an Employment Judge) has normally heard cases sitting alone. The Employment Judge reviews the papers before the hearing and unless there are particular reasons for convening a full panel (for example, because the case raises particularly complex issues, or where a party to the case has requested this) hears the case sitting alone.

6.2 The Government proposes that Holiday Pay should be added to this list of jurisdictions. The Government considers this appropriate as entitlement to holiday pay is an absolute right, akin to the national minimum wage, where cases are routinely heard by a Judge sitting alone. This would also bring it into line with the other four jurisdictions proposed for eligibility for determination without a hearing.

- xiii) Do you agree that Holiday Pay should be added to the list of jurisdictions normally heard by an Employment Judge sitting alone? Please give your reasons for agreeing or disagreeing.



## Section 7

# Other changes not directly related to the Dispute Resolution Review

7.1 In addition to the changes in procedure arising from the Dispute Resolution Review, the Government is taking the opportunity to update The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, as amended. This exercise is not intended to be a major rewriting of the Rules, as was the case in 2004, but will address a number of issues which have arisen since then, including implementing provisions of the Tribunals, Courts and Enforcement Act 2007 as they apply to qualification periods for Employment Tribunal judges. In addition, some technical amendments have been made to the Rules since 2004, and some of the changes proposed will be of the same character i.e. minor drafting improvements and corrections. Other proposed amendments are aimed at clarifying and/or improving existing procedures to provide greater certainty, efficiency and consistency. Draft regulations are set out at Annex B. An informal consolidated text is available for information at Annex C.

## Clarifying changes

7.2 The following changes will improve transparency and remove any ambiguity.

### The overriding objective.

7.3 The Government does not intend to change the fundamental principle of the Regulations, which is to provide access to justice, but is seeking to give tribunals and Employment Judges added flexibility in dealing with cases justly. The proposed changes will expressly set out the approach to be taken to achieve this by avoiding disadvantage to the parties on account of, for example, apparent disparities in their, or their representatives', skills and experience, in so far as these are relevant to the presentation of the case.

## Interim Relief Hearings

7.4 Interim relief orders are available in proceedings where a dismissal is alleged to have occurred on certain grounds which are rendered automatically unfair by statute (for example trade union membership or activity, or the claimant's role as a worker representative on certain matters). Under the 2004 Regulations, these cases were brought under the umbrella of pre-hearing reviews, but it has since been recognised that the ordinary procedures for pre-hearing reviews do not fully allow for the particular features of interim relief applications, which are set out in primary legislation. The Government is therefore considering addressing this anomaly in the Regulations, although, since the primary provisions take precedence, procedure will not be affected.

## Time Limits

7.5 Time limits for the submission of a response in cases where the State Immunity Act 1978 applies. In these cases, where the respondent is a foreign State, the time limit is longer than the normal 28 days, and Government believes that it would be helpful to include this explicitly in the Rules. It would not constitute a change to procedure.

## Changes to procedure

7.6 Other administrative changes would result in a change of procedure.

## Default judgments

7.7 At present the issuing of default judgments where a response is not presented or accepted is a discretionary matter. This has led to some confusion and procedural delay. For the sake of greater clarity and efficiency Government is considering making the issue of such judgments mandatory. This would be subject only to circumstances where, in the opinion of the Employment Judge, insufficient information has been provided to enable this to happen. Where, in the opinion of the Judge, more information would be required to enable a default judgment to be made, the respondent would be asked to provide further information. Where this is not forthcoming, a default judgment would be issued.

## Electronic Communications

7.8 The Government has been looking again at the circumstances in which proceedings may be conducted through electronic communications, with a view to improving clarity and maximising flexibility for users of the system, while ensuring that appropriate safeguards are in place. Draft revisions to the Rules of Procedure therefore provide explicitly that evidence may be given electronically and that, where electronic communications are used, the public (in public hearings) and the tribunal

(in private hearings other than case management discussions) must be able to both see and hear all parties to the communication.

#### Withdrawal of proceedings

7.9 The drafting of rule 25, which deals with the withdrawal and dismissal of proceedings has been criticised and the Government is therefore seeking to clarify its effect.

7.10 Under Rule 25, a claimant may withdraw all or part of his or her claim at any time in the tribunal proceedings. This can be done either orally at a hearing or in writing to the Employment Tribunal Office. Where a claim has been withdrawn, a respondent may apply to have the proceedings against him/her dismissed. Where a withdrawn claim is dismissed, the claimant cannot start a fresh claim based on the same set of facts (though the claimant may apply for a review of a dismissal order, or appeal against it).

7.11 Where a claim is withdrawn, but is not dismissed<sup>5</sup>, a second claim may be lodged, which relies on the same facts. The pre-existing claim cannot be 'continued', as proceedings have been brought to an end. The draft regulations therefore seek to clarify this position.

7.12 The Government is also considering introducing a provision to enable the notification to the Employment Tribunals Office of an Acas-conciliated settlement to act as a trigger for the withdrawal and dismissal of proceedings, without the need for a separate application. This is intended to streamline the system and provide greater certainty for the benefit of users.

#### Stage 1 equal value hearings

7.13 The Government is seeking views on whether stage 1 equal value hearings should be conducted as other pre-hearing reviews, that is, the default position would be for them to be heard by an Employment Judge sitting alone, subject to a written request for a full tribunal hearing from a party and the Judge's agreement. This would only apply to the stage 1 hearings, and not equal value cases in their entirety.

#### Implementation of the provisions of the TCE Act 2007 in relation to qualification periods

7.14 The TCE Act 2007 contains provisions for a reduction in the qualification periods for appointment to the judiciary to be reduced from seven to five years, and for those five years to have been spent practising law. Ministry of Justice intends to implement these provisions in relation to other judicial appointments, and the Government considers it appropriate to do so in respect of Employment Tribunal judges.

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<sup>5</sup> This includes situations where a respondent has not applied for a dismissal, where a respondent has applied for the dismissal, but is unsuccessful, and where the dismissal is successfully reviewed or appealed.

- xiv) Do you think that the clarifying and procedural changes set out above and in the draft regulations at Annex B would be helpful? If not, why not?
- xv) Do you agree that the proposed amendments to rule 25 are an appropriate means of achieving greater certainty for claimants and respondents? Please explain the reasons for your view.
- xvi) Do you think that stage 1 equal value hearings should be conducted as other pre-hearing reviews (i.e. with an Employment Judge sitting alone)? Please give your reasons. Alternatively, are stage 1 equal value hearings so different from other pre-hearing reviews that they require a full tribunal? Please give your reasons.
- xvii) Do you think the qualification period for appointment as an Employment Tribunal judge should be reduced from 7 to 5 years? Please give your reasons.

## Section 8

# Changes to secondary legislation as a consequence of the Employment Bill

### Minor consequential changes

8.1 Some of the changes to secondary legislation in this package are minor consequential changes as a result of measures in the Employment Bill, which is currently going through Parliament. For example, a statutory instrument is needed to remove from the employment tribunal Rules references to fixed conciliation periods, as the Employment Bill will have repealed this provision in primary legislation.

8.2 Similarly, the TUPE Regulations require amendment to remove references to the 2004 Dispute Resolution Regulations, as these will have been repealed. At present, if an employee in a TUPE transfer is undergoing a discipline or grievance procedure under the Dispute Resolution Regulations, the importing employer must be informed. We propose replacing the reference to the 2004 Regulations with a reference to the Acas Code of Practice on Disciplinary and Grievance Procedures.

xviii) Do you agree that references to the 2004 Dispute Resolution Regulations in the TUPE Regulations should be replaced with references to the Acas Code of Practice on Disciplinary and Grievance Procedures?

## Transitional arrangements

8.3 The Government, together with the Tribunals Service and Acas, has given considerable thought to transitional arrangements for implementation of the dispute resolution measures in the Employment Bill.

8.4 Our policy objective is to have transitional arrangements that:

- Are simple to understand and give clarity to employers, employees, their advisors and the Tribunals Service
- Maximise the number of claimants operating under the new regime as early as possible

8.5 We have looked in depth at a number of options and have concluded that there is only one option that is acceptable i.e. the same approach in principle as was taken in 2004 when the current regulations were introduced. This is because other options would entail retrospective changes to the legal position of individuals and employers, which would not be acceptable. Switching regimes halfway through a case would also increase complexity.

8.6 This means that the Dispute Resolution Regulations will continue to apply in cases where the act leading to the grievance has started or taken place and/or the employer has contemplated taking or started disciplinary action prior to commencement day, which is expected to be 6 April 2009 – and any such claims would be judged throughout the case against current law with the formal three-step procedure, adjustments for procedural unfairness in the 10-50% range and automatically unfair dismissal for non-compliance with the statutory procedures.

8.7 The disadvantage of this approach is that parallel regimes could be running into 2010 for some claims because of the impact of time limits e.g. a claim submitted for an event which occurred on 3 April 2009 where a 6 months time limit applied plus a 3 month extension which then takes 3 months to get to a hearing, will not reach the tribunal until 2010. Although arguably it may be confusing in principle to have two parallel regimes, there will be certainty as to which regime will apply to a particular case.

xix) Do you agree with the Government's conclusion on transitional arrangements? If not, can you suggest an alternative which enables more cases to transfer to the new regime sooner **without** retrospective changes to the legal position of individuals and employers?

## Section 9

# Changes relating to wider Tribunals Service transformation

9.1 The Government is considering a number of amendments which relate directly to the wider Tribunals Service transformation. Some of these relate to how the Employment Tribunal, although a separate pillar, operates within the wider Tribunals Service. These amendments are set in the context of providing a more effective and efficient service through the setting up of Administrative Support Centres and Multi-Jurisdictional Hearing Centres which will underpin the Tribunals Service transformation.

## Regulation 4

9.2 The Government is considering:

- i) the extension of powers to allow for the removal of a President on the grounds of misconduct;
- ii) the introduction of a power to enable the Senior President, rather than the Lord Chancellor or Lord President, to appoint Acting Presidents with the Tribunal.

## Regulation 5

9.3 The Government is considering the need to clarify regulation 5 to distinguish between the role of the President and the Lord Chancellor in relation to determining the number of Tribunals to be established and the process for designating an office as being an Employment Tribunal Office.

## Regulation 13

9.4 The Government is considering aligning practice direction making powers with those in the Tribunals Courts and Enforcement Act 2006, where consent from the Senior President or Lord Chancellor is sought in certain circumstances prior to publication of a practice direction. This power will facilitate the development of improved practice and procedure but cannot be used to interpret substantive case law.

## Rule 27

9.5 The Government is considering introducing a measure to provide the President, Vice President and Regional Chairmen with the power to delegate their listing functions on short track cases, as appropriate, to the secretary/administrative staff.

xx) Do you think that the proposed changes relating to wider Tribunals Service transformation would be helpful? If not, why not?



# Summary of Consultation Questions

## Extending the definition of “relevant advisor” for compromise agreements

- i) Do you agree with adding CIPD members to the list of relevant independent advisors?
- ii) What do you think are the benefits, disadvantages and risks?
- iii) Do you think any other group(s) of advisors ought to be considered and if so, why? What other issues need to be considered in respect of the group(s) that you have suggested?

## Arrangements for accruing interest on unpaid employment tribunal awards

- iv) Do you agree with the case for moving from a fixed to a floating rate of interest on unpaid awards?
- v) If so, what should the rate be and why?
- vi) Do you agree with the case for streamlining the date from which interest is paid? This would mean aligning with the existing provisions on discrimination and equal pay.

## Broader powers for employment tribunals to make recommendations

- vii) What guidance ought to be made available to parties on the operation of the extended power?
- viii) Should guidance to the judiciary emphasise that recommendations should be commensurate to the capacity of the employer to implement them?
- ix) Do you have views on how employees might be informed about recommendations made to their employer?
- x) Do you think that a mechanism should also be put in place for alerting tribunals to relevant previous recommendations?

## Written determinations

- xi) Do you agree that there are benefits in introducing such a procedure for written determinations?
- xii) Can you propose an alternative approach, which would still protect the rights of parties to tribunal cases and ensure that written determinations were only made on the basis of informed positive consent?

## Adding Holiday Pay to the list of jurisdictions normally heard by an Employment Judge sitting alone

- xiii) Do you agree that Holiday Pay should be added to the list of jurisdictions normally heard by an Employment Judge sitting alone? Please give your reasons for agreeing or disagreeing.

## Other changes not directly related to the Dispute Resolution Review

- xiv) Do you think that the clarifying and procedural changes set out above and in the draft regulations at Annex C would be helpful? If not, why not?
- xv) Do you agree that the proposed amendments to rule 25 are an appropriate means of achieving greater certainty for claimants and respondents? Please explain the reasons for your view.
- xvi) Do you think that stage 1 equal value hearings should be conducted as other pre-hearing reviews (ie with an Employment Judge sitting alone)? Please give your reasons? Alternatively, are stage 1 equal value hearings so different from other pre-hearing reviews that they require a full tribunal? Please give your reasons.
- xvii) Do you think the qualification period for appointment as an Employment Tribunal judge should be reduced from 7 to 5 years? Please give your reasons.

## Changes to secondary legislation as a consequence of the Employment Bill

- xviii) Do you agree that references to the 2004 Dispute Resolution Regulations in the TUPE Regulations should be replaced with references to the Acas Code of Practice on Disciplinary and Grievance Procedures?
- xix) Do you agree with the Government's conclusion on transitional arrangements? If not, can you suggest an alternative which enables more cases to transfer to the new regime sooner **without** retrospective changes to the legal position of individuals and employers?

### Changes relating to wider Tribunals Service transformation

- xx) Do you think that the proposed changes relating to wider Tribunals Service transformation would be helpful? If not, why not?

### Revised Employment Tribunal Forms

- xxi) Do you have any comments on the revised Employment Tribunal forms (drafts of which are set out at Annex D)?

# Draft Regulations

The Employment Tribunals Act 1996 (Tribunal Composition) Order 2008

**(Section 6: Adding Holiday Pay to the list of jurisdictions normally heard by an Employment Judge sitting alone)**

Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2009

**(Section 7: Other changes not directly related to the Dispute Resolution Review)**

Employment Act 2008 (Commencement No. 1 and Transitional and Saving Provisions) Order 2008

**(Section 8: Changes to secondary legislation as a consequence of the Employment Bill)**

**2008 No.**

**EMPLOYMENT TRIBUNALS**

**The Employment Tribunals Act 1996 (Tribunal Composition)  
Order 2008**

*Made* - - - -

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*Coming into force* - -

*6th April 2009*

Whereas a draft of this Order was laid before Parliament in accordance with section 41(2) of the Employment Tribunals Act 1996<sup>(a)</sup> and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 4(4) of the Act makes the following Order:

**Citation and commencement**

**1.** This Order may be cited as the Employment Tribunals Act 1996 (Tribunal Composition) Order 2008 and shall come into force on 6th April 2009.

**Amendment to the Employment Tribunals Act 1996**

**2.** In section 4(3) of the Employment Tribunals Act 1996, after paragraph (cd), there is inserted—

- “(ce) proceedings on a complaint under regulation 30 of the Working Time Regulations 1998<sup>(b)</sup> relating to a payment due under regulations 13, 13A 14(2) or 16(1) of those Regulations,
- (cf) proceedings on a complaint under regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003<sup>(c)</sup> relating to a payment due under regulation 11 of those Regulations,
- (cg) proceedings on a complaint under regulation 18 of the Civil Aviation (Working Time) Regulations 2004<sup>(d)</sup> relating to a payment due under regulation 4 of those Regulations,
- (ch) proceedings on a complaint under regulation 19 of the Fishing Vessels (Working Time: Sea-fisherman) Regulations 2004<sup>(e)</sup> relating to a payment due under regulation 11 of those Regulations.”.

Date *Name*  
Parliamentary Under Secretary of State,  
Department for Business, Enterprise and Regulatory Reform

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<sup>(a)</sup> 1996 c.17.  
<sup>(b)</sup> S.I. 1998/1833.  
<sup>(c)</sup> S.I. 2003/3049.  
<sup>(d)</sup> S.I. 2004/756.  
<sup>(e)</sup> S.I. 2004/1713.

**2009 No. xxxx**

**EMPLOYMENT TRIBUNALS**

**Employment Tribunals (Constitution and Rules of Procedure)  
(Amendment) Regulations 2009**

*Made* - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - \*\*\*

The Secretary of State, in exercise of the powers conferred by sections of the Employment Tribunals Act 1996<sup>(a)</sup>, and paragraph 32 of Schedule 9 to the Government of Wales Act 2006<sup>(b)</sup>, and paragraph 37 of Schedule 6 to the Scotland Act 1998<sup>(c)</sup>, and after consultation with the Administrative Justice and Tribunals Council, and that Council having consulted with the Scottish Committee and the Welsh Committee, in accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007<sup>(d)</sup>, makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2009 and shall come into force on 6 April 2009.

**Amendment of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004**

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

**Amendment of Regulations**

3. For Regulation 3 substitute—

“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 judges 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, and have a fair opportunity to present their evidence and arguments as effectively as possible;
- (b) dealing with the case in ways which are proportionate to the complexity or importance of the issues;
- (c) ensuring that it is dealt with expeditiously and fairly; and

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<sup>(a)</sup> 1996 c.17.  
<sup>(b)</sup> 2006 c.32.  
<sup>(c)</sup> 1998 c.46.  
<sup>(d)</sup> 2007 c.15.  
<sup>(e)</sup> S.I. 2004/1861.

- (d) saving expense.
- (3) A tribunal or judge shall seek to give effect to the overriding objective when it or he:-
  - (a) exercises any power given to it or him 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) A tribunal or judge shall give effect to the overriding objective by:
  - (a) taking account of the apparent skills and experience of a party or representative and any apparent inequality in such skills and experience where this is relevant to the presentation of the case; and
  - (b) taking such steps as are reasonable, including adjusting procedure, to avoid so far as practicable any disadvantage to a party caused by lack of skill or experience of that party or their representative.
- (5) The parties and their representatives shall assist the tribunal or the judge to further the overriding objective.”.

### **Amendment of Schedule 1**

4.—(1) Schedule 1 is amended as follows—

(2) In rule 4—

- (a) in paragraph (4) delete “under rule 11”;
- (b) after paragraph (4) insert—

“(4A) When a respondent is legally represented in relation to the application the respondent or his representative must, at the same time as the application is sent to the Employment Tribunal Office, provide all other parties with the following information in writing—

- (a) details of the application and the reasons why it is made;
- (b) notification that any objection to the application must be sent to the Employment Tribunal Office within 7 days of receiving the application or, if a hearing of any type is due to take place before the expiry of that 7 day period, before the date of that hearing (whichever date is the earlier);
- (c) that any objection to the application must be copied to both the Employment Tribunal Office and all other parties;

and the respondent or his representative must confirm in writing to the Employment Tribunal Office that this rule has been complied with.

(4B) The time limit described in sub-paragraph 4A(b) may be amended where the judge or tribunal considers it in the interests of justice to do so.

(4C) Where a respondent is not legally represented in relation to the application, the Secretary shall inform all other parties of the matters listed in sub-paragraphs (4A)(a) to (c).

(4D) Where a respondent’s application is refused the Secretary shall inform the parties in writing of such refusal unless the application is refused at a hearing.”.

- (c) after paragraph (5) insert—

“(5A) This rule is subject to section 12 of the State Immunity Act 1978<sup>(a)</sup>”.

(3) In rule 6(6) replace “should have been” with “is to be”.

(4) In rule 8—

- (a) in paragraph (1) replace “may” with “shall (subject to paragraph 1A)”, and delete “if he considers it appropriate to do so”;
- (b) after paragraph (1) insert—

“(1A) Where a judge considers that there is insufficient information before him to issue a default judgment under paragraph 8(1), he shall make an order (as described in Rule 10(2)(b))

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<sup>(a)</sup> 1978 c. 33.

- requiring such additional information as he considers appropriate to enable him to issue a default judgment under paragraph 8(1)”;
- (c) for paragraph (3) substitute—
- “(3) A default judgment shall determine liability and remedy.”;
- (d) in paragraph (4) after “The Secretary shall also inform the parties of their right to” insert “apply to”;
- (e) in paragraph (6) replace “rule 23(2)” with “Regulation 2”.
- (5) In rule 9 before subparagraph (a) insert—
- “(aa) make a request under rule 30 (written reasons);”.
- (6) In rule 10—
- (a) in sub-paragraph (2)(d) after the first reference to “party” insert “or”;
- (b) in paragraph (5) insert “sub-” before “paragraph (2)(d)”;
- (c) in paragraph (7) insert “sub-” before “paragraph (2)(j)”;
- (d) in paragraph (8) between “shall” and “inform” insert “(except where the order is for a witness order described in rule 10(2)(c) only)”.
- (7) In rule 11—
- (a) in sub-paragraph (4)(a) replace “sought” with “made”;
- (b) in sub-paragraph (4)(b) after “receiving the application” insert “or, if a hearing of any type is due to take place before the expiry of that 7 day period, before the date of that hearing (whichever date is the earlier)”;
- (c) after paragraph (4) insert—
- “(4A) The time limit described in sub-paragraph 11(4)(b) may be amended where the judge or tribunal considers it in the interests of justice to do so.”;
- (d) in paragraph (5) between “shall” and “inform” insert “(except where the application is for a witness order described in rule 10(2)(c) only)”;
- (e) insert “sub-” before “paragraphs (4)(a) to (c)”.
- (8) In rule 12—
- (a) in sub-paragraph (2)(a):
- (i) after “such” insert “an”;
- (ii) insert “sub-” before “paragraph (2)(b)”.
- (b) in paragraph (3) insert “sub-” before “paragraph (2)(b)”.
- (9) In rule 14, after sub-paragraph (1)(b), insert—
- “(bb) a hearing dealing with interim relief under rule 18A;”
- (10) In rule 15—
- (a) in paragraph (1) delete the words in brackets and after “may be conducted” insert “, and evidence may be given”;
- (b) in paragraph (2) delete “it is to be conducted by use of”; and after “electronic communications” insert “are to be used”; and after “the public is able to” insert “see and”;
- (c) after paragraph (2) insert—
- “(3) Where a hearing (other than case management discussions under Rule 17) is required by these rules to be held in private, and electronic communications are to be used in accordance with this rule, the tribunal or judge must be able to see and hear all parties to the communication.”.
- (11) In rule 18—
- (a) delete sub-paragraph (2)(e);
- (b) in paragraph (3) delete “and (2)”.
- (12) After Rule 18, insert—



**“Interim relief**

**18A.** Hearings dealing with interim relief are interim hearings. Subject to sections 161 and 165 of TULR(C)A or sections 128 and 131 of the Employment Rights Act, these rules shall apply to the following applications as they apply to pre-hearing reviews:

- (a) an application made under section 161 of TULR(C)A or section 128 of the Employment Rights Act for interim relief;
- (b) an application made under section 165 of TULR(C)A or section 131 of the Employment Rights Act to vary or revoke an order.”.

(13) In Rule 25—

(a) for paragraph (4) substitute—

“(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, the claimant may not commence a further claim against the respondent for the same, or substantially the same, cause of action (unless the decision to dismiss is successfully reviewed or appealed).”.

(b) after Rule 25 insert—

**“Automatic dismissal of claims following withdrawal, where the claims are settled through ACAS**

**25A.**—(1) Where—

- (a) the parties settle the proceedings through ACAS;
- (b) the whole of, or part of, the claim is covered by the settlement, which is agreed in writing;
- (c) the parties to the settlement have confirmed in the settlement agreement or otherwise in writing their understanding that the proceedings covered by the settlement will be dismissed, following the withdrawal of the claim by the claimant; and
- (d) the claimant withdraws the whole of, or the part of, the claim that is covered by the settlement by informing the Employment Tribunal Office of the withdrawal in accordance with Rule 25(2);

the Judge shall dismiss the proceedings covered by the settlement.

(2) The dismissal shall take place no later than [28] days after the date on which the Employment Tribunal Office receives the following:

- (a) written evidence that the requirement described in sub-paragraph (1)(c) has been satisfied; and
- (b) the written notification of withdrawal described in sub-paragraph (1)(d).

(3) If proceedings are dismissed under paragraph (1) the claimant may not commence a further claim against the respondent for the same, or substantially the same, cause of action (unless the decision to dismiss is successfully reviewed or appealed).”.

(14) At the end of rule 26 insert—

“(4) The President, Vice President, Regional Judge or a judge 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.”.

(15) In rule 27 delete paragraph (1).

(16) In rule 33—

(a) in paragraph (2) after “the application must” insert “(where no response has been accepted)”;

(b) after paragraph (2) insert the following—

“(2A) An application under paragraph (2) shall be determined by a judge without the need to hold a hearing.”;

(c) in paragraph (3) after “chairman in public” insert “unless all the parties to the proceedings consent in writing to the review without a hearing”;

(d) after paragraph (7) insert—

“(8) A judge may on his own initiative review a default judgment on the grounds listed at Rule 34(3)(a)(b) and (e).”.

(17) In rule 34, in paragraph (4) insert “sub-” before “paragraphs (3)(a) and (e)”.

(18) In rule 50, in paragraph (5) insert “sub-” before “paragraph (4)(b)”.

(19) In rule 54—

(a) in (2)(b)(ii) insert “sub-” before both references to “paragraph (1)(a)”, and before “paragraph (2)(a)”;

(b) in (2)(b)(iii) insert “sub-” before “paragraph (2)(a)”, and before “paragraph (1)(b) or (c)”.

(20) In rule 60, after paragraph (3) insert —

“(4) Where the Attorney-General makes a request to search for inspect and take a copy of any relevant documents within a case file (including documents held electronically) for the purpose of preparing an application or considering whether to make an application under section 42 of the Supreme Court Act 1981<sup>(a)</sup>, or section 33 of the Employment Tribunals Act 1996<sup>(b)</sup> (restriction of vexatious proceedings), the Secretary will send notice of or a copy of any relevant document which relates to any proceedings before the tribunal, or any decision, order or award of the tribunal.”.

(21) In rule 61—

(a) in sub-paragraph (1)(b), delete “fax or other”;

(b) in sub-paragraph (2)(b), delete “fax or other”;

(c) in sub-paragraph (4)(b) substitute “Legal Services Directorate” for “Employment Relations Directorate”;

(d) in sub-paragraph (4)(c) delete from “9 Buckingham Gate” to end and insert “20 Victoria Street, London SW1H 0NF;”.

## **Amendment of Schedule 2**

**5.**—(1) Schedule 2 is amended as follows—

(2) In rule 3(2) insert “sub-” before “paragraph (1)(b)”.

(3) Rule 3(3) insert “sub-” before “paragraph (1)(b)”;

(4) In rule 10(4) insert “sub-” before “paragraph (3)(a)”.

(5) In rule 10 (5) insert “sub-” before the two references to “paragraph (3)(a)”.

(6) In rule 10(6) insert “sub-” before “paragraph (3)(b)”.

## **Amendment of Schedule 4**

**6.**—(1) Schedule 4 is amended as follows:

(2) In rule 6(4) and (5) insert “sub-” before “paragraph (3)(d)”.

(3) In rule 10(5) insert “sub-” before “paragraph (4)(b) or (c)”.

## **Amendment of Schedule 6**

**7.**—(1) Schedule 6 is amended as follows:

(2) In rule 4 delete paragraph (2).

(3) In rule 4(3) insert “judge or” after “stage 1 equal value hearing the”.

(4) In rule 4(4) and rule 4(7) insert “sub-” before “paragraph (3)(a)”.

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<sup>(a)</sup> Supreme Court 1981 c. 54.

<sup>(b)</sup> 1996 c. 17.

**Transitional provisions**

**8.** The following Regulations shall not have effect in relation to proceedings where those proceedings were commenced before 6th April 2009:

- (a) regulation 3;
- (b) regulation 4(2)(a) and (b);
- (c) regulation 4(4)(a), (b), (c) and (d);
- (d) regulation 4(7);
- (e) regulation 4(10);
- (f) regulation 4(13);
- (g) regulation 4(16);
- (h) regulation 7(2) and (3).

Date

*Name*  
Parliamentary Under Secretary of State  
Department

**2008 No. xxxxxx**

**EMPLOYMENT**

**Employment Act 2008 (Commencement No. 1 and Transitional  
and Saving Provisions) Order 2008**

*Made* - - - - - \*\*\*

The Secretary of State, in exercise of the powers conferred by section 21 of the Employment Act 2008<sup>(a)</sup>, makes the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Employment Act 2008 (Commencement No. 1 and Transitional and Saving Provisions) Order 2008.

(2) In this Order:

“the 1996 Act” means the Employment Rights Act 1996<sup>(b)</sup>;

“the 2002 Act” means the Employment Act 2002<sup>(c)</sup>;

“the Regulations” means the Employment Act 2002 (Dispute Resolution) Regulations 2004<sup>(d)</sup>;

“the Act” means the Employment Act 2008.

**Commencement**

2. Subject to Article 3, the following provisions of the Act shall come into force on 6th April 2009—

- (a) section 1;
- (b) section 2;
- (c) section 3;
- (d) section 4;
- (e) section 5;
- (f) section 6;
- (g) section 7; and
- (h) Part 1 of Schedule 1.

**Transitional and saving provisions**

3. The transitional and saving provisions in Schedule 1 to this Order shall have effect.

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<sup>(a)</sup> 2008 c.  
<sup>(b)</sup> 1996 c. 18.  
<sup>(c)</sup> 2002 c. 22.  
<sup>(d)</sup> S.I. 2004/752

Date

*Name*  
Parliamentary Under Secretary of State,  
Department for Business, Enterprise and Regulatory Reform

## Transitional and saving provisions

1. The following amendments and repeals shall have effect subject to the provisions of paragraphs 2 and 3—

- (a) the repeal of sections 29 to 33 and Schedules 2 to 4 of the 2002 Act made by section 1 of the 2008 Act;
- (b) the repeal of section 98A of the 1996 Act made by section 2 of the 2008 Act;
- (c) the amendments made to the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(a)</sup>, and the amendment to section 124A of the 1996 Act by section 3 of the 2008 Act; and
- (d) the repeals specified in Part 1 of Schedule 1 to the 2008 Act.

2. The amendments and repeals referred to in paragraph 1 shall not have effect where on or before 5th April 2009 the standard dismissal and disciplinary procedure or the modified dismissal procedure applies by virtue of Regulation 3 of the Regulations.

3. (1) The amendments and repeals referred to in paragraph 1 shall not have effect where the standard grievance procedure or the modified grievance procedure applies by virtue of Regulation 6 of the Regulations and the action about which the employee complains occurs wholly before 6th April 2009.

(2) The amendments and repeals referred to in paragraph 1 shall not have effect where the standard grievance procedure or the modified grievance procedure applies by virtue of Regulation 6 of the Regulations and:

(a) the action about which the employee complains begins before 6th April 2009 and continues beyond that date; and

(b) the employee presents a complaint to the tribunal or complies with paragraph 6 or 9 of Schedule 2 to the Regulations in relation to the grievance:

(i) under a jurisdiction listed in Schedule 2 to this Order on or before 4<sup>th</sup> July 2009;

or

3.(ii) under a jurisdiction listed in Schedule 3 to this Order:

on or before 4<sup>th</sup> October 2009;

4. The amendments made to section 24 and section 163 of the 1996 Act by section 7 of the 2008 Act shall not have effect where the complaint has been presented to the employment tribunal prior to 6th April 2009.

SCHEDULE 2

Section 63 of the Sex Discrimination Act 1975 (c 65) (discrimination in the employment field)

Section 54 of the Race Relations Act 1976 (c 74) (discrimination in the employment field)

Section 145A of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (inducements relating to union membership or activities)

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<sup>(a)</sup> 1992 c. 52.

Section 145B of that Act (inducements relating to collective bargaining)

Section 146 of that Act (detriment in relation to union membership and activities)

Paragraph 156 of Schedule A1 to that Act (detriment in relation to union recognition rights)

Section 17A of the Disability Discrimination Act 1995 (c. 50) (discrimination in the employment field)

Section 23 of the Employment Rights Act 1996 (c. 18) (unauthorised deductions and payments)

Section 48 of that Act (detriment in employment)

Section 111 of that Act (unfair dismissal)

Section 24 of the National Minimum Wage Act 1998 (c. 39) (detriment in relation to national minimum wage)

The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623) (breach of employment contract and termination)

The Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 (SI 1994/1624) (corresponding provision for Scotland)

Regulation 30 of the Working Time Regulations 1998 (SI 1998/1833) (breach of regulations)

Regulation 32 of the Transnational Information and Consultation of Employees Regulations 1999 (SI 1999/3323) (detriment relating to European Works Councils)

Regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003 (SI 2003/1661) (discrimination in the employment field)

Regulation 28 of the Employment Equality (Religions or Belief) Regulations 2003 (SI 2003/1660) (discrimination in the employment field)

Regulation 45 of the European Public Limited-Liability Company Regulations 2004 (SI 2004/2326) (detriment in employment)

Regulation 33 of the Information and Consultation of Employees Regulations 2004 (SI 2004/3426) (detriment in employment)

Paragraph 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349) (detriment in employment)]

Regulation 36 of the Employment Equality (Age) Regulations 2006 (SI 2006/1031) (discrimination in the employment field)

Regulation 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (SI 2006/2059) (detriment in relation to involvement in a European Cooperative Society)

Regulation 51 of the Companies (Cross-Border Mergers) Regulations 2007 (SI 2007/2974) (detriment in relation to special negotiating body or employee participation)

## SCHEDULE 3

Section 2 of the Equal Pay Act 1970 (c 41) (equality clauses)

Section 163 of Employment Rights Act 1996 (c 18 ) (redundancy payments)



# Informal consolidated text of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004

## **(A) Regulation 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 judges 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, and have a fair opportunity to present their evidence and arguments as effectively as possible;
  - (b) dealing with the case in ways which are proportionate to the complexity or importance of the issues;
  - (c) ensuring that it is dealt with expeditiously and fairly; and
  - (d) saving expense.
- (3) A tribunal or judge shall seek to give effect to the overriding objective when it or he:-
  - (a) exercises any power given to it or him 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) A tribunal or judge shall give effect to the overriding objective by:
  - (a) taking account of the apparent skills and experience of a party or representative and any apparent inequality in such skills and experience where this is relevant to the presentation of the case; and
  - (b) taking such steps as are reasonable, including adjusting procedure, to avoid so far as practicable any disadvantage to a party caused by lack of skill or experience of that party or their representative.
- (5) The parties and their representatives shall assist the tribunal or the judge to further the overriding objective.

**Schedule 1**  
**(B) Rule 4**

(1) If the respondent wishes to respond to the claim made against him he must present his response to the Employment Tribunal Office within 28 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 in accordance with paragraph (4).

(2) Unless it is a response in proceedings described in regulation 14(3), any response presented on or after 1st October 2005 must be on a response form prescribed by the Secretary of State pursuant to regulation 14.

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

- (a) the respondent's full name;
- (b) the respondent's address;
- (c) whether or not the respondent wishes to resist the claim in whole or in part; and
- (d) if the respondent wishes to so resist, on what grounds.

(4) The respondent may apply for an extension of the time limit within which he is to present his response. The application must be presented to the Employment Tribunal Office within 28 days of the date on which the respondent was sent a copy of the claim (unless the application is made under rule 33(1)) and must explain why the respondent cannot comply with the time limit. Subject to rule 33, the chairman shall only extend the time within which a response may be presented if he is satisfied that it is just and equitable to do so.

(4A) When a respondent is legally represented in relation to the application the respondent or his representative must, at the same time as the application is sent to the Employment Tribunal Office, provide all other parties with the following information in writing—

- (a) details of the application and the reasons why it is made;
- (b) notification that any objection to the application must be sent to the Employment Tribunal Office within 7 days of receiving the application or, if a hearing of any type is due to take place before the expiry of that 7 day period, before the date of that hearing (whichever date is the earlier);
- (c) that any objection to the application must be copied to both the Employment Tribunal Office and all other parties;

and the respondent or his representative must confirm in writing to the Employment Tribunal Office that this rule has been complied with.

(4B) The time limit described in sub-paragraph 4A(b) may be amended where the judge or tribunal considers it in the interests of justice to do so.

(4C) Where a respondent is not legally represented in relation to the application, the Secretary shall inform all other parties of the matters listed in sub-paragraphs (4A)(a) to (c).

(4D) Where a respondent's application is refused the Secretary shall inform the parties in writing of such refusal unless the application is refused at a hearing.

(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.

(5A) This rule is subject to section 12 of the State Immunity Act 1978.

(6) A single document may include the response of more than one respondent to a single claim provided that—

(a) each respondent intends to resist the claim and the grounds for doing so are the same for each respondent; or

(b) none of the respondents intends to resist the claim.

### **(C) Rule 6**

(1) Where a response is required to be presented using a prescribed form by rule 4(2), but the prescribed form has not been used, the Secretary shall not accept 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 (defined in rule 4(3));

(b) the response has not been presented within the relevant time limit.

(3) If the Secretary decides not to accept a response for either of the reasons in paragraph (2), he shall refer the response together with a statement of his reasons for not accepting the response to a chairman. The chairman shall decide in accordance with the criteria in paragraph (2) whether the response should be accepted.

(4) 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 5(2).

(5) 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.

(6) Any decision by a chairman not to accept a response may be reviewed in accordance with rules 34 to 36. If the result of such a review is that the response is to be accepted, then the Secretary shall accept the response and proceed to deal with the response as described in rule 5(2).

**(D) Rule 8**

(1) In any proceedings if the relevant time limit for presenting a response has passed, a chairman shall (subject to paragraph 1A), in the circumstances listed in paragraph (2), issue a default judgment to determine the claim without a hearing.

(1A) Where a judge considers that there is insufficient information before him to issue a default judgment under paragraph 8(1), he shall make an order (as described in Rule 10(2)(b)) requiring such additional information as he considers appropriate to enable him to issue a default judgment under paragraph 8(1).

(2) Those circumstances are when either-

(a) no response in those proceedings has been presented to the Employment Tribunal Office within the relevant time limit;

(b) a response has been so presented, but a decision has been made not to accept the response either by the Secretary under rule 6(1) or by a chairman under rule 6(3), and the Employment Tribunal Office has not received an application under rule 34 to have that decision reviewed; or

(c) a response has been accepted in those proceedings, but the respondent has stated in the response that he does not intend to resist the claim.

(3) A default judgment shall determine liability and remedy.

(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 apply to have the default judgment reviewed under rule 33. The Secretary shall put a copy of the default judgment on the Register (subject to rule 49 (sexual offences and the Register)).

(5) The claimant or respondent may apply to have the default judgment reviewed in accordance with rule 33.

(6) If the parties settle the proceedings (either by means of a compromise agreement (as defined in Regulation 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 under rule 33 to have the default judgment revoked.

**(E) Rule 9**

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

(aa) make a request under rule 30 (written reasons);

(a) make an application under rule 33 (review of default judgments);

(b) make an application under rule 35 (preliminary consideration of application for review) in respect of rule 34(3)(a), (b) or (e);

(c) be called as a witness by another person; or

(d) be sent a copy of a document or corrected entry in accordance with rule 8(4), 29(2) or 37;

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.

**(F) Rule 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 make an order in relation to any matter which appears to him to be appropriate. Such orders may be any of those listed in paragraph (2) or such other orders as he thinks fit. Subject to the following rules, orders 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 for the definition of "hearing").
- (2) Examples of orders which may be made under paragraph (1) are orders--
- (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 the attendance of any person in Great Britain either to give evidence or to produce documents or information;
  - (d) requiring any person in Great Britain to disclose documents or information to a party or to allow a party to inspect such material as might be ordered by a County Court (or in Scotland, by a sheriff);
  - (e) extending any time limit, whether or not expired (subject to rules 4(4), 11(2), 25(5), 30(5), 33(1), 35(1), 38(7) and 42(5) of this Schedule, and to rule 3(4) of Schedule 2);
  - (f) requiring the provision of written answers to questions put by the tribunal or chairman;
  - (g) that, subject to rule 22(8), a short conciliation period be extended into a standard conciliation period;
  - (h) staying (in Scotland, sisting) the whole or part of any proceedings;
  - (i) that part of the proceedings be dealt with separately;
  - (j) that different claims be considered together;
  - (k) that any person who the chairman or tribunal considers may be liable for the remedy claimed should be made a respondent in the proceedings;
  - (l) dismissing the claim against a respondent who is no longer directly interested in the claim;
  - (m) postponing or adjourning any hearing;
  - (n) varying or revoking other orders;
  - (o) giving notice to the parties of a pre-hearing review or the Hearing;
  - (p) giving notice under rule 19;

- (q) giving leave to amend a claim or response;
  - (r) that any person who the chairman or tribunal considers has an interest in the outcome of the proceedings may be joined as a party to the proceedings;
  - (s) that a witness statement be prepared or exchanged; or
  - (t) as to the use of experts or interpreters in the proceedings.
- (3) An order may specify the time at or within which and the place at which any act is required to be done. An order may also impose conditions and it shall inform the parties of the potential consequences of non-compliance set out in rule 13.
- (4) When a requirement has been imposed under paragraph (1) the person subject to the requirement may make an application under rule 11 (applications in proceedings) for the order to be varied or revoked.
- (5) An order described in . . . sub-paragraph (2)(d) which requires a person other than a party to grant disclosure or inspection of material may be made only when the disclosure sought is necessary in order to dispose fairly of the claim or to save expense.
- (6) Any order containing a requirement described in either sub-paragraph (2)(c) or (d) shall state that under section 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 maximum fine.
- (7) An order as described in sub-paragraph (2)(j) may be made only if all relevant parties have been given notice that such an order may be made and they have been given the opportunity to make oral or written representations as to why such an order should or should not be made.
- (8) Any order made under this rule shall be recorded in writing and signed by the chairman and the Secretary shall (except where the order is for a witness order described in rule 10(2)(c) only) inform all parties to the proceedings of any order made as soon as is reasonably practicable.

### **(G) Rule 11**

- (1) At any stage of the proceedings a party may apply for an order to be issued, varied or revoked or for a case management discussion or pre-hearing review to be held.
- (2) An application for an order must be made not less than 10 days before the date of the hearing at which it is to be considered (if any) unless it is not reasonably practicable to do so, or the chairman or tribunal considers it in the interests of justice that shorter notice be allowed. The application must (unless a chairman orders otherwise) 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 any orders sought.
- (3) An application for an order must include an explanation of how the order would assist the tribunal or chairman in dealing with the proceedings efficiently and fairly.

(4) When a party is legally represented in relation to the application (except where the application is for a witness order described in rule 10(2)(c) only), that party or his representative must, at the same time as the application is sent to the Employment Tribunal Office, provide all other parties with the following information in writing—

(a) details of the application and the reasons why it is made;

(b) notification that any objection to the application must be sent to the Employment Tribunal Office within 7 days of receiving the application, or, if a hearing of any type is due to take place before the expiry of that 7 day period, before the date of that hearing (whichever date is the earlier);

(c) that any objection to the application must be copied to both the Employment Tribunal Office and all other parties;

and the party or his representative must confirm in writing to the Employment Tribunal Office that this rule has been complied with.

(4A) The time limit described in sub-paragraph 11(4)(b) may be amended where the judge or tribunal considers it in the interests of justice to do so.

(5) Where a party is not legally represented in relation to the application, the Secretary shall (except where the application is for a witness order described in rule 10(2)(c) only) inform all other parties of the matters listed in sub-paragraphs (4)(a) to (c).

(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 unless the application is refused at a hearing.

### **(H) Rule 12**

(1) Subject to paragraph (2) and to rules 10(7) and 18(7), a chairman may make an order 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 an order without giving the parties the opportunity to make representations--

(a) the Secretary must send to the party affected by such an order a copy of the order and a statement explaining the right to make an application under sub-paragraph (2)(b); and

(b) a party affected by the order may apply to have it varied or revoked.

(3) An application under sub-paragraph (2)(b) must (subject to rule 10(2)(e)) be made before the time at which, or the expiry of the period within which, the order was to be complied with. Such an application must (unless a chairman orders otherwise) 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.

### **(I) Rule 14**

- (1) A chairman or a tribunal (depending on the relevant rule) may hold the following types of hearing-
  - (a) a case management discussion under rule 17;
  - (b) a pre-hearing review under rule 18;
  - (bb) a hearing dealing with interim relief under rule 18A;
  - (c) a Hearing under rule 26; or
  - (d) a review hearing under rule 33 or 36.
- (2) So far as it appears appropriate to do so, the chairman or tribunal shall seek to avoid formality in his or 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.
- (3) The chairman or tribunal (as the case may be) shall make such enquiries of persons appearing before him or it and of witnesses as he or it considers appropriate and shall otherwise conduct the hearing in such manner as he or it considers most appropriate for the clarification of the issues and generally for the just handling of the proceedings.
- (4) Unless the parties agree to shorter notice, the Secretary shall send notice of any hearing (other than a case management discussion) to every party not less than 14 days before the date fixed for the hearing and shall inform them that they have the opportunity to submit written representations and to advance oral argument. The Secretary shall give the parties reasonable notice before a case management discussion is held.
- (5) If a party wishes to submit written representations for consideration at a hearing (other than a case management discussion) he shall present them to the Employment Tribunal Office not less than 7 days before the hearing and shall at the same time send a copy to all other parties.
- (6) The tribunal or chairman may, if it or he considers it appropriate, consider representations in writing which have been submitted otherwise than in accordance with paragraph (5).

#### **(J) Rule 15**

- (1) A hearing may be conducted and evidence may be given by use of electronic communications provided that the chairman or tribunal 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 electronic communications are to be used in accordance with this rule then, subject to rule 16, it must be held in a place to which the public has access and using equipment so that the public is able to see and hear all parties to the communication.
- (3) Where a hearing (other than case management discussions under Rule 17) is required by these rules to be held in private, and electronic communications are to be used in accordance with this rule, the tribunal or judge must be able to see and hear all parties to the communication.

#### **(K) Rule 18**

- (1) Pre-hearing reviews are interim hearings and shall be conducted by a chairman unless the circumstances in paragraph (3) are applicable. Subject to rule 16, they shall take place in public.



(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 order in accordance with rule 10 or do anything else which may be done at a case management discussion;
- (c) order that a deposit be paid in accordance with rule 20 without hearing evidence;
- (d) consider any oral or written representations or evidence;
- (e) .....

(3) Pre-hearing reviews shall be conducted by a tribunal composed in accordance with section 4(1) of the Employment Tribunals Act if—

- (a) a party has made a request in writing not less than 10 days before the date on which the pre-hearing review is due to take place that the pre-hearing review be conducted by a tribunal instead of a chairman; and
- (b) a chairman considers that one or more substantive issues of fact are likely to be determined at the pre-hearing review, that it would be desirable for the pre-hearing review to be conducted by a tribunal and he has issued an order that the pre-hearing review be conducted by a tribunal.

(4) If an order is made under paragraph (3), any reference to a chairman in relation to a pre-hearing review shall be read as a reference to a tribunal.

(5) Notwithstanding the preliminary or interim nature of a pre-hearing review, at a pre-hearing review the chairman may give judgment on any preliminary issue of substance relating to the proceedings. Judgments or orders made 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.

(6) Before a judgment or order listed in paragraph (7) is made, notice must be given in accordance with rule 19. The judgments or orders listed in paragraph (7) must be made at a pre-hearing review or a Hearing if one of the parties has so requested. If no such request has been made such judgments or orders may be made in the absence of the parties.

(7) Subject to paragraph (6), a chairman or tribunal may make a judgment or order:—

- (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 (or part of one) 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 an order or practice direction;
  - (f) striking out a claim where the chairman or tribunal considers that it is no longer possible to have a fair Hearing in those proceedings;
  - (g) making a restricted reporting order (subject to rule 50).
- (8) A claim or response or any part of one may be struck out under these rules only on the grounds stated in sub-paragraphs (7)(b) to (f).
- (9) If at a pre-hearing review a requirement to pay 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.

### **(L) Rule 18A**

Hearings dealing with interim relief are interim hearings. Subject to sections 161 and 165 of TULR(C)A or sections 128 and 131 of the Employment Rights Act, these rules shall apply to the following applications as they apply to pre-hearing reviews:

- (a) an application made under section 161 of TULR(C)A or section 128 of the Employment Rights Act for interim relief;
- (b) an application made under section 165 of TULR(C)A or section 131 of the Employment Rights Act to vary or revoke an order.

### **(M) Rule 25**

- (1) A claimant may withdraw all or part of his claim at any time - this may be done either orally at a hearing or in writing in accordance with paragraph (2).
- (2) To withdraw a claim or part of one in writing the claimant must inform the Employment Tribunal Office of the claim or the parts of it which are to be withdrawn. Where there is more than one respondent the notification must specify against which respondents the claim is being withdrawn.
- (3) The Secretary shall inform all other parties of the withdrawal. Withdrawal takes effect on the date on which the Employment Tribunal Office (in the case of written notifications) or the tribunal (in the case of oral notification) 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 does not affect proceedings as to costs, preparation time or wasted costs.
- (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, the claimant may not commence a further claim against the respondent for the same, or substantially the same, cause of action (unless the decision to dismiss is successfully reviewed or appealed).

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

**(N) Rule 25A**

(1) Where—

- (a) the parties settle the proceedings through ACAS;
- (b) the whole of, or part of, the claim is covered by the settlement, which is agreed in writing;
- (c) the parties to the settlement have confirmed in the settlement agreement or otherwise in writing their understanding that the proceedings covered by the settlement will be dismissed, following the withdrawal of the claim by the claimant; and
- (d) the claimant withdraws the whole of, or the part of, the claim that is covered by the settlement by informing the Employment Tribunal Office of the withdrawal in accordance with Rule 25(2);

the Judge shall dismiss the proceedings covered by the settlement.

(2) The dismissal shall take place no later than [28] days after the date on which the Employment Tribunal Office receives the following:

- (a) written evidence that the requirement described in sub-paragraph (1)(c) has been satisfied; and
- (b) the written notification of withdrawal described in sub-paragraph (1)(d).

(3) If proceedings are dismissed under paragraph (1) the claimant may not commence a further claim against the respondent for the same, or substantially the same, cause of action (unless the decision to dismiss is successfully reviewed or appealed).

**(O) Rule 26**

(1) A Hearing is held for the purpose of determining outstanding procedural or substantive issues or disposing of 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 (in Scotland, expenses) 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 16.

(4) The President, Vice President, Regional Judge or a judge 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.

**(P) Rule 27**

(1).....

(2) Subject to rule 14(3), at the Hearing a party shall be entitled to give evidence, to call witnesses, to question witnesses and to address the tribunal.

(3) The tribunal shall require parties and witnesses who attend the Hearing to give their evidence on oath or affirmation.

(4) The tribunal may exclude from the Hearing any person who is to appear as a witness in the proceedings until such time as they give evidence if it considers it in the interests of justice to do so.

(5) If a party fails to attend or to be represented (for the purpose of conducting the party's case at the Hearing) 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.

(6) If the tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (5), it shall first consider any information in its possession which has been made available to it by the parties.

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

**(Q) Rule 33**

(1) A party may apply to have a default judgment against or in favour of him reviewed. An application must be made in writing and presented to the Employment Tribunal Office within 14 days of the date on which the default judgment was sent to the parties. The 14 day time limit may be extended by a chairman if he considers that it is just and equitable to do so.

(2) The application must state the reasons why the default judgment should be varied or revoked. When it is the respondent applying to have the default judgment reviewed, the application must (where no response has been accepted) include with it the respondent's proposed response to the claim, an application for an extension of the time limit for presenting the response and an explanation of why rules 4(1) and (4) were not complied with.

(2A) An application under paragraph (2) shall be determined by a judge without the need to hold a hearing.

(3) A review of a default judgment shall be conducted by a chairman in public unless all the parties to the proceedings consent in writing to the review without a hearing. Notice of the hearing and a copy of the application shall be sent by the Secretary to all other parties.

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

and all parties to the proceedings shall be informed by the Secretary in writing of the chairman's judgment on the application.

(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 the respondent has a reasonable prospect of successfully responding to the claim or part of it.

(6) In considering the application for a review of a default judgment the chairman must have regard to whether there was good reason for the response not having been presented within the applicable time limit.

(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 5(2).

(8) A judge may on his own initiative review a default judgment on the grounds listed at Rule 34(3)(a)(b) and (e).

**(R) Rule 60**

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

(2) At a Hearing, or a pre-hearing review held in accordance with rule 18(3), a tribunal may make any order 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.

(4) Where the Attorney-General makes a request to search for inspect and take a copy of any relevant documents within a case file (including documents held electronically) for the purpose of preparing an application or considering whether to make an application under section 42 of the Supreme Court Act 1981, or section 33 of the Employment Tribunals Act 1996 (restriction of vexatious proceedings), the Secretary will send notice of or a copy of any relevant document which relates to any proceedings before the tribunal, or any decision, order or award of the tribunal.

**(S) Rule 61**

(1) Any notice given or document sent under these rules shall (unless a chairman or tribunal orders otherwise) be in writing and may be given or sent—

- (a) by post;
- (b) by 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 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 or an Employment Tribunal Office, other than a claim, shall be presented at the Employment Tribunal Office as notified by the Secretary to the parties.
- (4) 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 51), the offices of the Department for Business, Enterprise and Regulatory Reform (Legal Services 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 56, the Attorney General's Chambers, 20 Victoria Street, London SW1H 0NF;
- (d) in the case of a notice or document directed to the Counsel General to the Welsh Assembly Government under rule 56, the Counsel General to the Welsh Assembly Government, 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 56, 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 56, 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.

(5) 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.

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

(7) 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.

(8) In proceedings under the Equal Pay Act, the Sex Discrimination Act, the Sex Discrimination Act 1986, the Race Relations Act or the Disability Discrimination Act, copies of every document sent to the parties under rules 29, 30 or 32 shall be sent by the Secretary to the Commission for Equality and Human Rights.

### **(T) Schedule 6**

#### **Rule 4**

(1) When in an equal value claim there is a dispute as to whether any work is of equal value as mentioned in section 1(2)(c) of the Equal Pay Act, the tribunal shall conduct a "stage 1 equal value hearing" in accordance with both this rule and the rules applicable to pre-hearing reviews in Schedule 1.

(2).....

(3) At the stage 1 equal value hearing the judge or tribunal shall:

(a) where section 2A(2) of the Equal Pay Act applies, strike out the claim (or the relevant part of it) if, in accordance with section 2A(2A) of that Act, the tribunal must determine that the work of the claimant and the comparator are not of equal value;

(b) decide, in accordance with section 2A(1) of the Equal Pay Act, either that:

(i) the tribunal shall determine the question; or

(ii) it shall require a member of the panel of independent experts to prepare a report with respect to the question;

(c) subject to rule 5 and with regard to the indicative timetable, make the standard orders for the stage 1 equal value hearing as set out in rule 5;

(d) if the tribunal has decided to require an independent expert to prepare a report on the question, require the parties to copy to the independent expert all information which they are required by an order to disclose or agree between each other;

(e) if the tribunal has decided to require an independent expert to prepare a report on the question, fix a date for the stage 2 equal value hearing, having regard to the indicative timetable;

(f) if the tribunal has not decided to require an independent expert to prepare a report on the question, fix a date for the Hearing, having regard to the indicative timetable;

(g) consider whether any further orders are appropriate.

(4) Before a claim or part of one is struck out under sub-paragraph (3)(a), the Secretary shall send notice to the claimant giving him the opportunity to make representations to the tribunal as to whether the evaluation contained in the study in question falls within paragraph (a) or (b) of section 2A(2A) of the Equal Pay Act. The Secretary shall not be required to send a notice under this paragraph if the claimant has been given an opportunity to make such representations orally to the tribunal as to why such a judgment should not be issued.

(5) The tribunal may, on the application of a party, hear evidence upon and permit the parties to address it upon the issue contained in section 1(3) of the Equal Pay Act (defence of a genuine material factor) before determining whether to require an independent expert to prepare a report under paragraph (3)(b)(ii).

(6) When the Secretary gives notice to the parties of the stage 1 equal value hearing under rule 14(4) of Schedule 1, he shall also give the parties notice of the matters which the tribunal may and shall consider at that hearing which are described in paragraphs (3) and (5) of this rule and he shall give the parties notice of the standard orders in rule 5.

(7) The tribunal's power to strike out the claim or part of it under sub-paragraph (3)(a) is in addition to powers to strike out a claim under rule 18(7) of Schedule 1.



# Revised Draft Employment Tribunal Forms

The Government is reviewing the forms used by employment tribunals for submitting claims and responses (known as ET1 and ET3 respectively). We have taken the opportunity to make other changes to the forms, intended to simplify and shorten them, and the Government would welcome comments on these. Drafts of the new ET1 and ET3, which have been amended to reflect the change to the statutory procedures are below:



# Claim to an Employment Tribunal

Before making a claim to an **Employment Tribunal** it is **VERY IMPORTANT** that you get advice and information about your rights.

You are strongly advised to ring the **Acas Helpline on 08457 474747** for advice on how you might be able to resolve your complaint without having to make a claim. **You should remember, though, that in most cases the tribunal must receive your claim within three months. This three months begins with the date your employment ended or when the matter you are complaining about happened.**

If you have taken advice and you still want to make a claim **please read the guidance notes** and the notes on this page before filling in the form.

Your claim must be on an approved form and you must provide the information marked with \*.

If you are one of a number of claimants making a claim arising out of the same or similar circumstances you can submit a multiple claim via the website **[www.employmenttribunals.gov.uk](http://www.employmenttribunals.gov.uk)**. If you do not have access to the website you can give the names and addresses of additional claimants on a separate sheet or sheets of paper. Please make sure that all the information you give is as accurate as possible.

Where there are tick boxes, please tick the one that applies.

Please write clearly in black ink using CAPITAL LETTERS.

For claims made in England and Wales only, if someone is advising or representing you in relation to your claim, they must, unless they are a practising solicitor or barrister, be authorised to do so, wherever they are based (including Scotland, the Channel Islands and all of Europe). Trade union officials, Citizens' Advice Bureau advisors or a personal friend helping you present your claim may be exempted from these requirements. However, to check your representative's status, and for more information, phone 0845 450 6858 or go to [www.claimsregulation.gov.uk](http://www.claimsregulation.gov.uk)

# 1 Your details

1.1 Title: Mr  Mrs  Miss  Ms  Other

1.2\* First name (or names):

1.3\* Surname or family name:

1.4 Date of birth (date/month/year): DD - MM - YYYY Are you: male?  female?

1.5\* Address: Number or Name  
Street  
+ Town/City  
County  
Postcode

1.6 Phone number (where we can contact you in the day time):  
Mobile number (if different):

1.7 How would you prefer us to communicate with you?  
(Please tick only one box)  
E-mail  Post  Fax

Fax number:

E-mail address:

# 2 Respondent's details

2.1\* Give the name of your employer or the organisation you are claiming against.

2.2\* Address: Number or Name  
Street  
+ Town/City  
County  
Postcode

Phone number:

2.3 If you worked at a different address from the one you have given at 2.2, please give the full address and postcode.

Postcode:

Phone number:

2.4 If your complaint is against more than one respondent, please give the names, addresses and postcodes of additional respondents. **Please see section 11.**

### 3 Employment details

3.1 Please give the following information if possible.

When did your employment start?

DD-MM-YYYY

Is your employment continuing? Yes  No

If your employment has ceased, or you are in a period of notice, when did it, or will it, end?

DD-MM-YYYY

3.2 Please say what job you do or did.

### 4 Earnings and benefits

4.1 How many hours on average do, or did you, work each week?   hours each week

4.2 How much are, or were, you paid?

Pay before tax £    ,    .00 Hourly

Normal take-home pay (including overtime, commission, bonuses and so on) £    ,    .00 Weekly

Monthly

Yearly

4.3 If your employment has ended, did you work (or were you paid for) a period of notice? Yes  No

If 'Yes', how many weeks' or months' notice did you work, or were you paid for?    weeks   months

4.4 Were you in your employer's pension scheme? Yes  No

**Please answer 4.5 to 4.9 if you were unfairly dismissed.**

4.5 If you received any other benefits, e.g. company car, uniform, etc, from your employer, please give details.

4.6 Since leaving your employment have you got another job? Yes  No   
If 'No', please now go straight to section 4.9.

4.7 Please say when you started (or will start) work.

4.8 Please say how much you are now earning (or will earn). £    ,    .00 each

4.9 Please tick the box to say what you want if your case is successful:

- a To get your old job back and compensation (reinstatement)
- b To get another job with the same employer and compensation (re-engagement)
- c Compensation only

## 5 Your claim

5.1 Please tick one or more of the boxes below. In the space provided, describe the event, or series of events, that have caused you to make this claim:

a I was discriminated against on the grounds of

- Sex (including equal pay)
- Disability
- Sexual orientation
- Race
- Religion or belief
- Age

b I was unfairly dismissed

c I am claiming a redundancy payment

d I am owed

- notice pay
- holiday pay
- wages

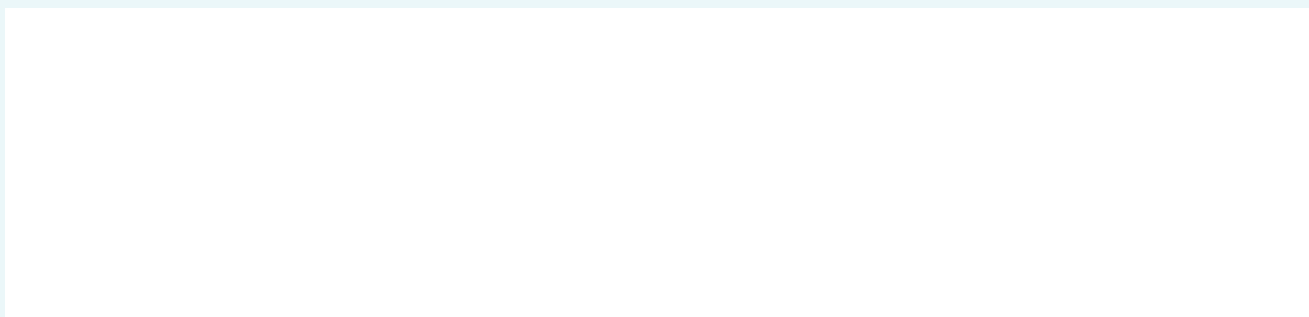
e Other complaints(s)

5.2 Please set out the background and details of your claim in the space below.



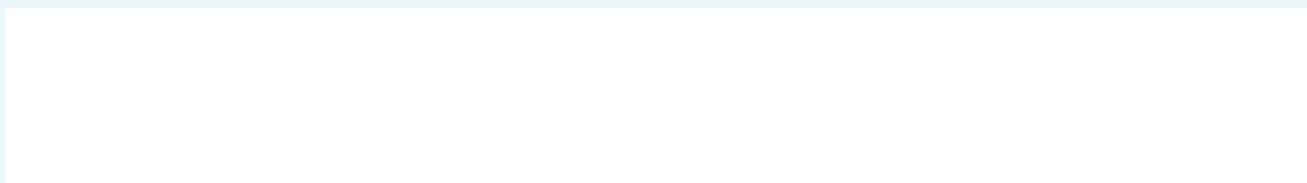
## 6 Other Information

6.1 Please do not send a covering letter with this form. You should add any extra information you want us to know here.



## 7 What compensation or remedy are you seeking

7.1 Completion of this section is optional, but may help if you state what compensation or remedy you are seeking from your employer as a result of this complaint. If you specify an amount, please explain how you have calculated that figure.



## 8 Your representative

Please fill in this section only if you have appointed a representative. If you do fill in this section, we will in future only send correspondence to your representative and not to you.

8.1 Representative's name:

8.2 Name of the representative's organisation:

8.3 Address:      Number or Name  
                         Street  
                         + Town/City  
                         County  
                         Postcode

8.4 Phone number:

Mobile number (if different):

8.5 Reference:

8.6 How would they prefer us to communicate with them? (Please tick only one box)      E-mail       Post       Fax

Fax number:

E-mail address:  @

## 9 Disability

9.1 Please tick this box if you consider you have a disability      Yes       No   
If 'Yes', please say what this disability is and tell us what assistance, if any, you will need as your claim progresses through the system, including for any hearings that may need to be held at Tribunal Service premises.

## 10 Multiple cases

10.1 To your knowledge, is your claim one of a number of claims against the same employer arising from the same, or similar, circumstances?      Yes       No

# 11 Details of Additional Respondents

Name of your employer or the organisation you are claiming against.


Address:     Number or Name  
                   Street  
            + Town/City  
                   County  
                   Postcode


Phone number:


Name of your employer or the organisation you are claiming against.


Address:     Number or Name  
                   Street  
            + Town/City  
                   County  
                   Postcode


Phone number:


Name of your employer or the organisation you are claiming against.


Address:     Number or Name  
                   Street  
            + Town/City  
                   County  
                   Postcode


Phone number:


**Please read the form and check you have entered all the relevant information.**  
**Once you are satisfied, please tick this box.**

**Data Protection Act 1998.** We will send a copy of this form to the respondent(s) and Acas. We will put some of the information you give us on this form onto a computer. This helps us to monitor progress and produce statistics. Information provided on this form is passed to the Department for Business, Enterprise and Regulatory Reform to assist research into the use and effectiveness of employment tribunals.





# 1

1.1\* Claimant's name:

## 2 Your details

2.1\* Name of your organisation:

Contact name:

2.2\* Address:      Number or Name

                         Street

                         + Town/City

                         County

                         Postcode

You do not need to answer 2.3 and 2.4 if you have appointed a representative (see section 7).

2.3 Phone number (where we can contact you in the day time):

Mobile number (if different):

2.4 How would you prefer us to communicate with you?      E-mail       Post       Fax

(Please tick only one box)

Fax number:

E-mail address:  @

## 3 Employment details

3.1 Are the dates of employment given by the claimant correct?      Yes       No

If 'Yes', please now go straight to section 3.3.

3.2 If 'No', please give dates and say why you disagree with the dates given by the claimant.

When their employment started  DD -  MM -  YY  YY

When their employment ended or will end  DD -  MM -  YY  YY

Is their employment continuing?      Yes       No

I disagree with the dates for the following reasons.

### 3 Employment details

3.3 Is the claimant's description of their job or job title correct? Yes  No   
If 'Yes', please now go straight to section 4

3.4 If 'No', please give the details you believe to be correct below.

### 4 Earnings and benefits

4.1 Is the information given by the claimant correct about being paid for, or working, a period of notice? Yes  No   
If 'Yes', please now go straight to section 4.3

4.2 If 'No', please give the details you believe to be correct below. If you gave them no notice or didn't pay them instead of letting them work their notice, please explain what happened and why.

4.3 Are the claimant's hours of work correct? Yes  No   
If 'Yes', please now go straight to section 4.5

4.4 If 'No', please enter the details you believe to be correct.   hours each week

4.5 Are the earnings details given by the claimant correct? Yes  No   
If 'Yes', please now go straight to section 4.7

4.6 If 'No', please give the details you believe to be correct below.

Pay before tax £    ,    .00

Normal take-home pay (including overtime, commission, bonuses and so on) £    ,    .00

Hourly

Weekly

Monthly

Yearly

4.7 Are the details about pension and other benefits, e.g. company car, uniform, etc, given by the claimant correct? Yes  No   
If 'Yes', please now go straight to section 5.

4.8 If 'No', please give the details you believe to be correct below.

## 5 Response

5.1\* Do you resist the claim?

Yes

No

If 'No', please now go straight to section 6.

5.2● If 'Yes', please set out in full the grounds on which you resist the claim.

## 6 Other information

6.1 Please do not send a covering letter with this form. You should add any extra information you want us to know here.

## 7 Your representative If you have a representative, please fill in the following.

7.1 Representative's name:

7.2 Name of the representative's organisation:

7.3 Address:      Number or Name  
                              Street  
                              + Town/City  
                              County  
                              Postcode

7.4 Phone number:

7.5 Reference:

7.6 How would you prefer us to communicate with them? E-mail  Post  Fax   
(Please tick only one box)

Fax number:

E-mail address:  @

**Please read the form and check you have entered all the relevant information.**   
**Once you are satisfied, please tick this box.**

**Data Protection Act 1998.** We will send a copy of this form to the respondent(s) and Acas. We will put some of the information you give us on this form onto a computer. This helps us to monitor progress and produce statistics. Information provided on this form is passed to the Department for Business, Enterprise and Regulatory Reform to assist research into the use and effectiveness of employment tribunals.

# Code of Practice on Consultation

## **The Consultation Code of Practice Criteria**

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

The complete code is available on the Better Regulation Executive's web site, address <http://bre.berr.gov.uk/regulation/consultation/code/>

